

No. 14749

---

United States  
Court of Appeals  
for the Ninth Circuit

---

GRIFFEN BUICK, INC., a Corporation, and  
J. W. NATION,  
Appellants,

vs.

LONDON EVANS, Administrator of the Estate of  
GENERAL GRANT GREER, JR., Deceased,  
Appellee.

GRIFFEN BUICK, INC., a Corporation, and  
J. W. NATION,  
Appellants,

vs.

LONDON EVANS, Administrator of the Estate of  
RUBBY GREER, Deceased,  
Appellee.

---

Transcript of Record

---

Appeals from the United States District Court for the  
District of Arizona

FILED

AUG 8 1955



No. 14749

---

---

**United States**  
**Court of Appeals**  
for the Ninth Circuit

---

GRIFFEN BUICK, INC., a Corporation, and  
J. W. NATION,  
Appellants,  
vs.

LONDON EVANS, Administrator of the Estate of  
GENERAL GRANT GREER, JR., Deceased,  
Appellee.

GRIFFEN BUICK, INC., a Corporation, and  
J. W. NATION,  
Appellants,  
vs.

LONDON EVANS, Administrator of the Estate of  
RUBBY GREER, Deceased,  
Appellee.

---

**Transcript of Record**

---

**Appeals from the United States District Court for the  
District of Arizona**



## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer, Civil 1921 Phx. ....	12
Answer, Civil 1922 Phx. ....	14
Attorneys of Record .....	1
Clerk's Certificate to Record on Appeal .....	146
Complaint, Civil 1921 Phx. ....	3
Complaint, Civil 1922 Phx. ....	6
Findings of Fact and Conclusions of Law, Civil 1921 Phx. ....	18
Findings of Fact and Conclusions of Law, Civil 1922 Phx. ....	22
Judgment, Civil 1921 Phx. ....	26
Judgment, Civil 1922 Phx. ....	27
Minute Entry, September 21, 1953—Granting Defendants' Motion to Strike .....	11
Minute Entry, February 10, 1954—Order on Stipulation, Waiving Jury Trial .....	17
Minute Entry, February 21, 1955—Order That Motion for New Trial Be Considered as a Motion to Set Aside Findings of Fact, Con- clusions of Law, Judgment and to Enter Judgment for Defendants, Etc.—Order De- nied .....	38

INDEX	PAGE
Motion for New Trial, Civil 1921 Phx., and Civil 1922 Phx. ....	37
Motion to Strike, Civil 1921 Phx. ....	9
Motion to Strike, Civil 1922 Phx. ....	10
Notice of Appeal, Civil 1921 Phx. ....	39
Notice of Appeal, Civil 1922 Phx. ....	39
Objections and Exceptions to Findings of Fact and Conclusions of Law and Judgment, Civil 1921 Phx. ....	28
Objections and Exceptions to Findings of Fact and Conclusions of Law and Judgment, Civil 1922 Phx. ....	33
Order Extending Time to File Record on Ap- peal ....	45
Order for Judgment ....	17
Statement of Points (U.S.D.C.) ....	40
Statement of Points (U.S.C.A.) ....	151
Stipulation Consolidating Cases on Appeal ...	44
Transcript of Proceedings ....	46
Witnesses, Defendants':	
Cochran, Louis O.	
—direct ....	123
—cross ....	126
Mendenhall, Wilfred T.	
—direct ....	127
—cross ....	132

## INDEX

## PAGE

## Witnesses, Defendants'—(Cont.):

Nation, J. W. Orby

—direct ..... 133

—cross ..... 140

—redirect ..... 143

## Witnesses, Plaintiff's:

Cochran, Louis O.

—direct ..... 48

—cross ..... 68

—redirect ..... 78, 83, 86

—recross ..... 80, 84

Evans, London

—direct ..... 109

—cross ..... 118

Nation, J. W. Orby

—direct ..... 87, 103





## ATTORNEYS OF RECORD

GUST, ROSENFELD, DIVELBESS AND  
ROBINETTE,

JAMES F. HENDERSON,

Security Building,

Phoenix, Arizona,

Attorneys for Appellants.

C. RAY ROBINSON,

Robinson-Montgomery Building,

Merced, California.

THOMAS L. BERKLEY,

2975 Sacramento St.,

Berkeley, California.

CLARK AND CLARK,

RONALD WEBSTER, JR.,

Heard Building,

Phoenix, Arizona,

Attorneys for Appellees.

WILLIAM B. BOONE,

301 Shell Bldg.,

100 Bush St.,

San Francisco 4, Calif.



In the United States District Court for the  
District of Arizona

No. Civ.-1921—Phx.

LONDON EVANS, Administrator of the Estate of  
General Grant Greer, Jr., Deceased,

Plaintiff,

vs.

GRIFFEN BUICK, INC., an Arizona Corporation,  
and J. W. NATION,

Defendants.

### COMPLAINT

Comes now the plaintiff, through C. Ray Robinson, Thomas L. Berkley, and Neil C. Clark, his attorneys, and for cause of action against the defendants, and each of them, alleges the following:

#### I.

That the plaintiff is a citizen of the State of California and is the duly appointed, qualified and acting Administrator of the estate of General Grant Greer, deceased.

That the defendant Griffen Buick, Inc., is an Arizona corporation with its principal place of business in the City and County of Yuma, Arizona; that the defendant J. W. Nation is a citizen of the State of Arizona and a resident of the County of Yuma in said state.

That the matter in controversy herein exceeds, exclusive of interest and costs, the sum of \$3,000.00.

That at all times hereinafter mentioned, the defendant Nation was an employee of the defendant Griffen Buick, Inc., and acting in the regular scope of his employment for the said defendant Griffen Buick, Inc.

## II.

That prior to December 23, 1952, the plaintiff's intestate, General Grant Greer, was a resident of the State of California and of the County of Contra Costa; that he was a married person and that the name of his wife was Rubby Greer.

## III.

That on or about December 23, 1952, at the hour of 10:30 o'clock p.m., the plaintiff's intestate was operating a motor vehicle in the State of Arizona, County of Yuma, and proceeding in a westerly direction on public highway U. S. No. 80 at a point approximately 18 miles East of the City of Yuma in said county and state, in a careful and prudent manner and with due regard for the safety of others who were then and there on the highway; that at said time and place the defendant J. W. Nation, an employee and agent of and acting in the course of his said employment for the defendant, Griffin Buick, Inc., was in possession of and operating one certain 1952 GMC Wrecker Tow Car owned and used by the defendant Griffen Buick, Inc.; the said defendant Nation, as such employee, negligently, wilfully, recklessly and wantonly placed and caused

said Tow Car to be placed on said highway in such a position and location as to imperil the lives and property of persons traveling in automobiles on said highway, and as a direct and proximate result of the negligent, reckless and wanton operation and placing of the said Tow Car by the defendant Nation, the automobile of plaintiff's intestate collided with the said Tow Car and a trailer to which said Tow Car was attached, and as a result of said collision, plaintiff's intestate suffered and sustained injuries from which he then and there died.

#### IV.

That at the time of his death plaintiff's intestate was a male of 31 years, in good and vigorous health and with a life expectancy of forty years; that he was gainfully employed and earning approximately \$3,600.00 per year; that as a direct and proximate result of the above-mentioned negligent, reckless, wilful and wanton conduct of the defendant Nation and the ensuing death of plaintiff's intestate, the estate of said plaintiff's intestate was diminished, depleted and damaged in the sum of \$200,000.00.

That the burial costs of plaintiff's decedent, incurred as the result of his wrongful death, amounted to \$687.50, thereby causing an additional loss to decedent's estate of \$687.50.

Wherefore, plaintiff prays judgment against the defendants, and each of them, for the sum of \$200,687.50, and for costs incurred herein, and for such

other and further relief as the Court shall deem meet and proper.

C. RAY ROBINSON,  
 THOMAS L. BERKLEY,  
 CLARK & CLARK,

By /s/ C. RAY ROBINSON,  
 Attorneys for Plaintiff.

[Endorsed]: Filed August 13, 1953.

---

In the United States District Court for the  
 District of Arizona  
 No. Civ-1922—Phx.

LONDON EVANS, Administrator of the Estate of  
 Rubby Greer, Deceased,  
 Plaintiff,

vs.

GRIFFEN BUICK, INC., an Arizona Corporation,  
 and J. W. NATION,  
 Defendants.

### COMPLAINT

Comes now the plaintiff, through C. Ray Robinson, Thomas L. Berkley, and Neil C. Clark, his attorneys, and for cause of action against the defendants, and each of them, alleges the following:

#### I.

That the plaintiff is a citizen of the State of California and is the duly appointed, qualified and act-

ing Administrator of the estate of Rubby Greer, deceased.

That the defendant Griffen Buick, Inc., is an Arizona corporation with its principal place of business in the City and County of Yuma, Arizona; that the defendant J. W. Nation is a citizen of the State of Arizona and a resident of the County of Yuma in said state.

That the matter in controversy herein exceeds, exclusive of interest and costs, the sum of \$3,000.00.

That at all times hereinafter mentioned, the defendant Nation was an employee of the defendant Griffen Buick, Inc., and acting in the regular scope of his employment for the said defendant Griffen Buick, Inc.

## II.

That prior to December 23, 1952, the plaintiff's intestate, Rubby Greer, was a resident of the State of California and of the County of Contra Costa; that she was a married person and that the name of her husband was General Grant Greer.

## III.

That on or about December 23, 1952, at the hour of 10:30 o'clock p.m., the plaintiff's intestate was riding in a motor vehicle in the State of Arizona, County of Yuma, and which was proceeding in a westerly direction on public highway U. S. No. 80 at a point approximately 18 miles East of the City of Yuma in said county and state, in a careful and prudent manner and with due regard for the safety

of others who were then and there on the highway; that at said time and place the defendant J. W. Nation, an employee and agent of and acting in the course of his said employment for the defendant, Griffin Buick, Inc., was in possession of and operating one certain 1952 GMC Recker Tow Car owned and used by the defendant Griffin Buick, Inc.; the said defendant Nation, as such employee, negligently, wilfully, recklessly and wantonly placed and caused said Tow Car to be placed on said highway in such a position and location as to imperil the lives and property of persons traveling in automobiles on said highway, and as a direct and proximate result of the negligent, reckless and wanton operation and placing of the said Tow Car by the defendant Nation, the automobile in which plaintiff's intestate was riding collided with the said Tow Car and a trailer to which said Tow Car was attached, and as a result of said collision, plaintiff's intestate suffered and sustained injuries from which she then and there died.

#### IV.

That at the time of her death plaintiff's intestate was a female of 32 years, in good and vigorous health and with a life expectancy of 39 years; that she cared for the seven minor children of herself and her said husband and maintained and kept the home of herself and her said husband and did all of the housework therein; that as direct and proximate result of the above-mentioned negligent, reckless, wilful and wanton conduct of the defendant Nation and the ensuing death of plaintiff's intestate, the



estate of said plaintiff's intestate was diminished, depleted and damaged in the sum of \$100,000.00.

That the burial costs of plaintiff's decedent, incurred as the result of her wrongful death, amounted to \$718.00, thereby causing an additional loss to decedent's estate of \$718.00.

Wherefore, plaintiff prays judgment against the defendants, and each of them, for the sum of \$100,718.00, and for costs incurred herein, and for such other and further relief as the Court shall deem meet and proper.

C. RAY ROBINSON,  
THOMAS L. BERKLEY,  
CLARK & CLARK,

By /s/ C. RAY ROBINSON,  
Attorneys for Plaintiff.

[Endorsed]: Filed August 13, 1953.

---

[Title of District Court and Cause.]

No. 1921

### MOTION TO STRIKE

Come Now the defendants, by and through their attorneys, Gust, Rosenfeld, Divelbess & Robinette, by James F. Henderson, and move the Court for an order striking from plaintiff's complaint that

part of said complaint set forth at page 3 thereof as a part of paragraph IV, which states as follows:

“That the burial costs of plaintiff’s decedent, incurred as the result of his wrongful death, amounted to \$687.50, thereby causing an additional loss to decedent’s estate of \$687.50.”

together with that part of plaintiff’s prayer which prays for the said sum of \$687.50.

GUST ROSENFELD,  
DIVELBESS & ROBINETTE,

By /s/ JAMES F. HENDERSON,  
Attorneys for Defendants.

[Endorsed]: Filed August 31, 1953.

---

[Title of District Court and Cause.]

No. 1922

### MOTION TO STRIKE

Come Now the defendants, by and through their attorneys, Gust, Rosenfeld, Divelbess & Robinette, by James F. Henderson, and move the Court for an order striking from plaintiff’s complaint that part of said complaint set forth at page 3 thereof as a part of paragraph IV, which states as follows:

“That the burial costs of plaintiff’s decedent, incurred as the result of her wrongful death, amounted to \$718.00, thereby causing an additional loss to decedent’s estate of \$718.00.”

together with that part of plaintiff's prayer which prays for the said sum of \$718.00.

GUST, ROSENFELD,  
DIVELBESS & ROBINETTE,

By /s/ JAMES F. HENDERSON,  
Attorneys for Defendants.

[Endorsed]: Filed August 31, 1953.

---

[Title of District Court and Cause.]

MINUTE ENTRY OF SEPTEMBER 21, 1953

Honorable Dave W. Ling, United States District  
Judge, Presiding.

Nos. 1921 and 1922

Defendants' Motion for Security for Costs and Motion to Strike come on regularly for hearing this day. Neil Clark, Esq., is present for the Plaintiff and James Henderson, Esq., is present for the defendants. On stipulation of counsel,

It Is Ordered that said Motion for Security for Costs is granted and that the plaintiff is allowed 30 days to file cost bond in the sum of \$250.00, and

It Is Further Ordered that Defendants' Motion to Strike is granted.

[Title of District Court and Cause.]

No. Civ. 1921 Phx.

### ANSWER

Come Now the defendants and for answer to plaintiff's complaint, admit, deny and allege:

#### I.

That defendants are without information or knowledge sufficient upon which to form a belief as to whether or not the plaintiff is a citizen of the State of California and is the duly appointed, qualified and acting administrator of the Estate of General Grant Greer, deceased, and therefore denies such allegations.

Admit the remaining allegations contained in paragraph I of plaintiff's complaint.

#### II.

These defendants are without information or knowledge sufficient upon which to form a belief as to the truth of the allegations contained in paragraph II of plaintiff's complaint and therefore deny each and every such allegation.

#### III.

Admit that on or about December 23, 1952, at about 10:30 o'clock p.m. plaintiff's intestate was operating a motor vehicle in the State of Arizona, County of Yuma, in a westerly direction on U. S. Highway No. 80, at a point approximately 18 miles

east of the City of Yuma; that at said time and place defendant J. W. Nation was an employee and agent of and acting in the course of his said employment for the defendant Griffen Buick, Inc., and that said J. W. Nation was operating a certain 1952 GMC wrecker tow car owned by defendant Griffen Buick, Inc.; that the automobile of plaintiff's intestate collided with the said tow car and a trailer.

Deny each and every, all and singular, the remaining allegations contained in paragraph III of plaintiff's complaint not specifically admitted herein.

IV.

These defendants are without information or knowledge sufficient upon which to form a belief as to the truth of the allegations contained in paragraph IV of plaintiff's complaint and therefore deny each and every such allegation.

V.

For a further and separate answer to plaintiff's complaint, defendants allege that said complaint fails to state a claim upon which relief can be granted.

VI.

For a further and separate answer to plaintiff's complaint, defendants allege that if the plaintiff's intestate, General Grant Greer, Jr., or the Estate of General Grant Greer, Jr., was injured or damaged in any respect whatsoever as a result of said collision, that said injuries or damages were solely

caused or contributed to by the gross and wanton negligence of General Grant Greer, Jr.

Wherefore, having fully answered plaintiff's complaint, defendants pray that said complaint be dismissed, and for their costs herein incurred, and for such other and further relief as to the Court may seem just.

GUST, ROSENFELD,  
DIVELBESS & ROBINETTE,

By /s/ JAMES F. HENDERSON,  
Attorneys for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed November 10, 1953.

---

[Title of District Court and Cause.]

No. Civ. 1922 Phx.

### ANSWER

Come Now the defendants and for answer to plaintiff's complaint, admit, deny and allege:

#### I.

That defendants are without information or knowledge sufficient upon which to form a belief as to whether or not the plaintiff is a citizen of the State of California and is the duly appointed, qualified and acting administrator of the Estate of Rubby Greer, deceased, and therefore denies such allegations.

Admit the remaining allegations contained in paragraph I of plaintiff's complaint.

II.

These defendants are without information or knowledge sufficient upon which to form a belief as to the truth of the allegations contained in paragraph II of plaintiff's complaint and therefore deny each and every such allegation.

III.

Admit that on or about December 23, 1952, at about 10:30 o'clock p.m., plaintiff's intestate was riding as a passenger in a motor vehicle in the State of Arizona, County of Yuma, which was proceeding in a westerly direction on U. S. Highway No. 80, at a point approximately 18 miles east of the City of Yuma; that at said time and place defendant J. W. Nation was an employee and agent of and acting in the course of his said employment for the defendant Griffen Buick, Inc., and that said J. W. Nation was operating a certain 1952 GMC wrecker tow car owned by defendant Griffen Buick, Inc.; that the automobile in which plaintiff's intestate was riding collided with the said tow car and a trailer.

Deny each and every, all and singular, the remaining allegations contained in paragraph III of plaintiff's complaint not specifically admitted herein.

IV.

These defendants are without information or

knowledge sufficient upon which to form a belief as to the truth of the allegations contained in paragraph IV of plaintiff's complaint and therefore deny each and every such allegation.

## V.

For a further and separate answer to plaintiff's complaint, defendants allege that said complaint fails to state a claim upon which relief can be granted.

## VI.

For a further and separate answer to plaintiff's complaint, defendants allege that if plaintiff's intestate or the Estate of Rubby Grant, or either of them, were injured or damaged in said collision, that said injuries or damages were solely caused or contributed to by the gross and wanton negligence of General Grant Greer, Jr.

Wherefore, having fully answered plaintiff's complaint, defendants pray that said complaint be dismissed, and for their costs herein incurred, and for such other and further relief as to the Court may seem just.

GUST, ROSENFELD,  
DIVELBESS & ROBINETTE,

By /s/ JAMES F. HENDERSON,  
Attorneys for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed November 10, 1953.



[Title of District Court and Cause.]

MINUTE ENTRY OF FEBRUARY 10, 1954

Nos. 1921 and 1922

Honorable Dave W. Ling, United States District  
Judge, Presiding.

Ronald Webster, Jr., Esq., is present for the  
plaintiff. James Henderson, Esq., is present for  
the defendants. On stipulation of counsel,

It Is Ordered that the record show that a jury  
is waived herein and that this case be tried before  
the court without a jury.

---

[Title of District Court and Cause.]

Nos. 1921 and 1922

### ORDER FOR JUDGMENT

It Is Ordered that plaintiff, London Evans, Ad-  
ministrator of the Estate of Rubby Greer, deceased,  
have and recover of defendants, Griffen Buick, Inc.,  
an Arizona Corporation, and J. W. Nation, the sum  
of ten thousand (\$10,000.00) Dollars.

It Is Ordered that plaintiff, London Evans, Ad-  
ministrator of the Estate of General Grant Greer,  
Jr., deceased, have and recover of defendants,  
Griffen Buick, Inc., an Arizona Corporation, and  
J. W. Nation, the sum of fifteen thousand (\$15,-  
000.00) Dollars.

Dated: August 24, 1954, at Portland, Oregon.

/s/ DAVE W. LING,  
U. S. District Judge.

[Endorsed]: Filed and docketed August 27,  
1954.

---

[Title of District Court and Cause.]

No. Civ. 1921 Phx.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having regularly come on for trial on February 12, 1954, at Phoenix, Arizona, before the Honorable David W. Ling, the plaintiff being represented by Clark & Clark, Law Offices of Thomas L. Berkley and Law Offices of C. Ray Robinson, by R. A. McCormick, and the defendants being represented by Gust, Rosenfeld, Divelbess & Robinette, by James F. Henderson, and the Court having received evidence, both written and oral, and being fully satisfied in the premises, makes its Findings of Fact and Conclusions of Law as follows:

#### Findings of Fact

##### I.

The plaintiff is a citizen of the State of California and is the duly appointed, qualified and acting Administrator of the Estate of General Grant Greer, Jr., deceased. The defendant, Griffen Buick, Inc., is an Arizona corporation with its principal place of business in the County of Yuma, Arizona.

The defendant, J. W. Nation, is a citizen of the State of Arizona and a resident of the County of Yuma in said state. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000.00).

II.

At all times herein mentioned, the defendant J. W. Nation, was an employee of the defendant, Griffen Buick, Inc., and was then and there acting within the course and scope of his said employment.

III.

Prior to December 23, 1952, the plaintiff's intestate, General Grant Greer, Jr., was a resident of the County of Contra Costa in the State of California. He was a married person and the name of his wife was Rubby Greer.

IV.

On December 23, 1952, the plaintiff's intestate was operating a motor vehicle in the County of Yuma, State of Arizona, and was proceeding in a westerly direction on public highway U. S. No. 80 at a point approximately eighteen miles east of the City of Yuma in said county and state. At said time and place the plaintiff's intestate was operating said motor vehicle in a careful and prudent manner and with due regard for the safety of others on the highway. At said time and place the defendant, J. W. Nation, was in possession of and controlled, maintained and operated a certain 1952 GMC wrecker tow car which was then and there owned by the defendant, Griffin Buick, Inc. At said time and

place said defendant Nation wantonly and wilfully placed said tow car and caused said tow car to be placed on said highway in such a position and location as to imperil the lives and property of persons traveling in motor vehicles on said highway, and said defendant Nation wilfully and wantonly failed and neglected to give and place suitable warnings of the position and location of said tow car, and said defendant Nation recklessly and negligently operated, maintained and controlled said tow car. As a direct and proximate result of said wilful and wanton misconduct and of said recklessness and negligence of the defendant Nation, the automobile driven by plaintiff's intestate collided with said tow car and with a trailer to which said tow car was attached, and as a direct and proximate result of said collision, plaintiff's intestate suffered and sustained injuries from which he then and there died.

#### V.

At the time of his said death plaintiff's intestate was a male of thirty-one years, he was in good and vigorous health, he had a life expectancy of approximately forty years, he was gainfully employed, and he was earning approximately \$3,600.00 per year. As a direct and proximate result of said wilful and wanton misconduct and of said recklessness and negligence on the part of defendant Nation and of the said death of plaintiff's intestate the estate of plaintiff's intestate was diminished, depleted and damaged in the sum of Fifteen Thousand Dollars (\$15,000.00).

VI.

The sole proximate cause of said collision and of said death and of said damage was the said wilful and wanton misconduct and said recklessness and negligence of said defendant Nation. At the time and place aforesaid the plaintiff's intestate was not guilty of any negligence or want of care which contributed as a proximate cause of said collision or of said death or of said damages.

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

Conclusions of Law

I.

This Court had jurisdiction of the subject matter and of the parties.

II.

The plaintiff is entitled to judgment against the defendants, Griffin Buick, Inc., and J. W. Nation, jointly and severally, in the sum of Fifteen Thousand Dollars (\$15,000.00), together with his costs and disbursements herein.

Let Judgment Be Entered Accordingly.

Dated: October 18, 1954.

/s/ DAVID W. LING,

Chief Judge, United States  
District Court.

Receipt of copy acknowledged.

[Endorsed]: Filed October 18, 1954.

[Title of District Court and Cause.]

No. Civ. 1922 Phx.

FINDING OF FACT AND CONCLUSIONS  
OF LAW

This matter having regularly come on for trial on February 12, 1954, at Phoenix, Arizona, before the Honorable David W. Ling, the plaintiff being represented by Clark & Clark, Law Offices of Thomas L. Berkley and Law Offices of C. Ray Robinson, by R. A. McCormick, and the defendants being represented by Gust, Rosenfeld, Divelbess & Robinette, by James F. Henderson, and the Court having received evidence, both written and oral, and being fully satisfied in the premises, makes its Findings of Fact and Conclusions of Law as follows:

## Findings of Fact

## I.

The plaintiff is a citizen of the State of California and is the duly appointed, qualified and acting Administrator of the Estate of Rubby Greer, deceased. The defendant, Griffin Buick, Inc., is an Arizona corporation with its principal place of business in the County of Yuma, Arizona. The defendant, J. W. Nation, is a citizen of the State of Arizona and a resident of the County of Yuma in said state. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000.00).

II.

At all times herein mentioned the defendant, J. W. Nation, was an employee of the defendant, Griffin Buick, Inc., and was then and there acting within the course and scope of his said employment.

III.

Prior to December 23, 1952, the plaintiff's intestate, Rubby Greer, was a resident of the County of Contra Costa in the State of California. She was a married person and the name of her husband was General Grant Greer, Jr.

IV.

On December 23, 1952, the plaintiff's intestate was riding in a motor vehicle in the County of Yuma, State of Arizona, and was proceeding in a westerly direction on public highway U. S. No. 80 at a point approximately eighteen miles east of the city of Yuma in said County and State. At said time and place said motor vehicle was being operated in a careful and prudent manner and with due regard for the safety of others on the highway. At said time and place the defendant, J. W. Nation, was in possession of and controlled, maintained and operated a certain 1952 GMC wrecker tow car which was then and there owned by the defendant Griffin Buick, Inc. At said time and place said defendant Nation wantonly and wilfully placed said tow car and caused said tow car to be placed on said highway in such a position and location as to imperil the lives and property of

persons traveling in motor vehicles on said highway, and said defendant Nation wilfully and wantonly failed and neglected to give and place suitable warnings of the position and location of said tow car, and said defendant Nation recklessly and negligently operated, maintained and controlled said tow car. As a direct and proximate result of said wilful and wanton misconduct and of said recklessness and negligence of the defendant Nation, the automobile in which plaintiff's intestate was riding collided with said tow car and with a trailer to which said tow car was attached, and as a direct and proximate result of said collision, plaintiff's intestate suffered and sustained injuries from which she then and there died.

## V.

At the time of her said death, plaintiff's intestate was a female of thirty-two years, she was in good and vigorous health, she had a life expectancy of approximately thirty-nine years, she cared for the seven minor children of herself and her husband, and she maintained and kept the home of herself and her husband and did all the housework therein. As a direct and proximate result of said wilful and wanton misconduct and of said recklessness and negligence on the part of defendant Nation and of the said death of plaintiff's intestate, the estate of plaintiff's intestate was diminished, depleted and damaged in the sum of Ten Thousand Dollars (\$10,000.00).



VI.

The sole proximate cause of said collision and of said death and of said damage was the said wilful and wanton misconduct and said recklessness and negligence of said defendant Nation. At the time and place aforesaid, the plaintiff's intestate was not guilty of any negligence or want of care which contributed as a proximate cause of said collision or of said death or of said damages.

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

Conclusions of Law

I.

This Court had jurisdiction of the subject matter and of the parties.

II.

The plaintiff is entitled to judgment against the defendants, Griffin Buick, Inc., and J. W. Nation, jointly and severally, in the sum of Ten Thousand Dollars (\$10,000.00), together with his costs and disbursements herein.

Let Judgment Be Entered Accordingly.

Dated: October 18, 1954.

/s/ DAVID W. LING,

Chief Judge, United States  
District Court.

Receipt of copy acknowledged.

[Endorsed]: Filed October 18, 1954.

In the United States District Court for the  
District of Arizona

No. Civ. 1921 Phx.

LONDON EVANS, Administrator of the Estate of  
General Grant Greer, Jr., Deceased,

Plaintiff,

vs.

GRIFFIN BUICK, INC., an Arizona Corporation,  
and J. W. NATION,

Defendants.

### JUDGMENT

This matter having regularly come on for trial on February 12, 1954, at Phoenix, Arizona, before the Honorable David W. Ling, the plaintiff being represented by Clark & Clark, Law Offices of Thomas L. Berkley and Law Offices of C. Ray Robinson, by R. A. McCormick, and the defendants being represented by Gust, Rosenfeld, Divelbess & Robinette, by James F. Henderson, and the Court having received evidence, both written and oral, and being fully satisfied in the premises and having made its Findings of Fact and Conclusions of Law herein,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the plaintiff have and recover of and from the defendants, Griffin Buick, Inc., and J. W. Nation, the sum of Fifteen Thousand Dollars (\$15,000.00) together with his costs and disbursements incurred herein, taxed at \$212.50.

Dated: October 18, 1954.

/s/ DAVID W. LING,  
Chief Judge, United States  
District Court.

Receipt of copy acknowledged.

Lodged September 9, 1954.

[Endorsed]: Filed and docketed October 18,  
1954.

---

In the United States District Court for the  
District of Arizona  
No. Civ. 1922 Phx.

LONDON EVANS, Administrator of the Estate of  
Rubby Greer, Deceased,

Plaintiff,

vs.

GRIFFIN BUICK, INC., an Arizona Corporation,  
and J. W. NATION,

Defendants.

### JUDGMENT

This matter having regularly come on for trial on February 12, 1954, at Phoenix, Arizona, before the Honorable David W. Ling, the plaintiff being represented by Clark & Clark, Law Offices of Thomas L. Berkley and Law Offices of C. Ray Robinson, by R. A. McCormick, and the defendants being represented by Gust, Rosenfeld, Divelbess &

Robinette, by James F. Henderson, and the Court having received evidence, both written and oral, and being fully satisfied in the premises, and having made its Findings of Fact and Conclusions of Law herein,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the plaintiff have and recover of and from the defendants, Griffin Buick, Inc., and J. W. Nation, the sum of Ten Thousand Dollars (\$10,000.00), together with his costs and disbursements incurred herein, taxed at \$39.00.

Dated: October 18, 1954.

/s/ DAVID W. LING,  
Chief Judge, United States  
District Court.

Receipt of copy acknowledged.

Lodged September 9, 1954.

[Endorsed]: Filed and docketed October 18, 1954.

---

[Title of District Court and Cause.]

DEFENDANTS' OBJECTIONS AND EXCEPTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT

Defendants, Griffin Buick, Inc., and J. W. Nation, object and except to the findings of fact and

conclusions of law and judgment as submitted by the Plaintiff and entered by the Court in the above-entitled cause on October 18, 1954, for the following reasons:

I.

Object and except to the findings of fact contained in Paragraph IV on the grounds and for the reasons that there was no evidence as to whether Plaintiff's Intestate was a passenger therein, or was operating Plaintiff's motor vehicle; there was no evidence whatsoever that Plaintiff's Intestate was operating said motor vehicle in a careful and prudent manner and with due regard for the safety of others on the highway, but that uncontroverted evidence clearly showed that said automobile was being operated at a high and excessive speed for the conditions then and there existing, and in excess of the legal, posted speed limit; that the uncontroverted evidence showed that Defendant Nation, while occupying the north half of the highway, and facing oncoming traffic, did so in compliance with the laws of the State of Arizona which require that to so occupy such part of a highway, that at least the opposite one-half should remain free and clear; and that Defendant, Nation, also complied with the further law of the State of Arizona in placing reflectors and flares at a distance from the disabled equipment which gave an even greater margin of warning than was required by statute; that the uncontroverted evidence showed that Defendant's tow truck was not placed on the highway in such a position and location as to im-

peril the lives and property of persons traveling in motor vehicles on said highway, but rather the uncontroverted evidence showed that other vehicles properly using the highway were not endangered, but were warned by the warning flares placed by Defendant Nation so as to safely pass the disabled equipment; that Defendant Nation did not fail and neglect to place suitable warning of the position and location of the tow car, but rather that the evidence clearly shows that such warnings were put in place by Defendant Nation and that they gave an even greater margin of notice than even the statute required; that the evidence showed Defendant Nation carefully, properly and lawfully operated, maintained and controlled the tow car, in compliance with the laws relating to such operation and control, and that neither was his action careless, reckless or negligent, nor that the action of said Defendant were the proximate cause of the resulting collision and the death of Plaintiff's Intestate which thereupon occurred.

## II.

Object and except to findings of fact contained in Paragraph V, on the grounds and for the reason that there was no evidence that established the earning capacity of Plaintiff's Intestate, or that Plaintiff's Intestate's Estate was diminished, depleted and damaged in the sum of Fifteen Thousand (\$15,000.00) Dollars, or any sum, as a result of the death of said Plaintiff's Intestate.

## III.

Object and except to findings of fact contained

in Paragraph VI on the grounds and for the reason that there was no evidence proving or tending to prove that the sole proximate cause of said collision was due to any act or action on the part of Defendant Nation; and on the further ground that the uncontroverted evidence showed that the car occupied by Plaintiff's Intestate was traveling at an excessive speed in view of the conditions then and there existing, and was not traveling at a properly reduced rate of speed while approaching the crest of a hill, and was traveling at a speed in excess of the legal and posted speed limit then and there existing, and was not under such control that it could be brought to a stop or maneuvered to safely avoid other automobiles or persons lawfully using the highway, and that such action on the part of the driver of the automobile of Plaintiff's Intestate, was the sole and proximate cause of said collision, or at least a contributing cause.

## IV.

Objects and excepts to conclusion of law No. II, on the grounds and for the reason that said conclusion is contrary to the evidence and contrary to the law.

## V.

Objects and excepts to the judgment of the court entered herein on the grounds and for the reasons that it is contrary to the evidence and to the law.

## VI.

Objects and excepts to the court's failure to make proposed amended findings of fact, Nos. IV through

XXXI, inclusive, as submitted by the Defendants, Griffin Buick, Inc., and J. W. Nation; and further objects and excepts to the Court's failure to make proposed amended conclusion of law No. II as submitted by Defendants Griffin Buick, Inc., and J. W. Nation, and to the court's failure to enter judgment in the form submitted by Defendants Griffin Buick, Inc., and J. W. Nation on the grounds and for the reasons that said findings of fact, conclusions of law, and judgment were supported by the uncontroverted testimony and the law, which clearly showed that Defendant J. W. Nation acted carefully and prudently and in conformance with all of his statutory duties while the driver of the automobile which was occupied by Plaintiff's Intestate, was negligent in the respects hereinbefore set forth and that such negligence was the sole or contributing cause of the collision which resulted in the death of Plaintiff's Intestate.

Respectfully submitted,

GUEST, ROSENFELD, DIVEL-  
BESS & ROBINETTE,

By /s/ JAMES F. HENDERSON,  
Attorneys for Defendants, Griffin Buick, Inc., a  
Corp., and J. W. Nation.

Affidavit of mailing attached.

[Endorsed]: Filed October 19, 1954.



[Title of District Court and Cause.]

DEFENDANTS' OBJECTIONS AND EXCEPTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT

Defendants, Griffin Buick, Inc., and J. W. Nation, object and except to the findings of fact and conclusions of law and judgment as submitted by the Plaintiff and entered by the Court in the above-entitled cause on October 18, 1954, for the following reasons:

I.

Object and except to the findings of fact contained in Paragraph IV on the grounds and for the reasons that there was no evidence as to whether Plaintiff's Intestate was a passenger therein, or was operating Plaintiff's motor vehicle; there was no evidence whatsoever that said motor vehicle was operated in a careful and prudent manner and with due regard for the safety of others on the highway, but that uncontroverted evidence clearly showed that said automobile was being operated at a high and excessive speed for the conditions then and there existing, and in excess of the legal, posted speed limit; that the uncontroverted evidence showed that Defendant Nation, while occupying the north half of the highway, and facing oncoming traffic, did so in compliance with the laws of the State of Arizona which require that to so occupy such part of a highway, that at least the opposite one-half should remain free and clear; and that Defendant Nation also complied with the further

law of the State of Arizona in placing reflectors and flares at a distance from the disabled equipment which gave an even greater margin of warning than was required by statute; that the uncontroverted evidence showed that Defendant's tow truck was not placed on the highway in such a position and location as to imperil the lives and property of persons traveling in motor vehicles on said highway, but rather the uncontroverted evidence showed that other vehicles properly using the highway were not endangered, but were warned by the warning flares placed by Defendant Nation so as to safely pass the disabled equipment; that Defendant Nation did not fail and neglect to place suitable warning of the position and location of the tow car, but rather that the evidence clearly shows that such warnings were put in place by Defendant Nation and that they gave an even greater margin of notice than even the statute required; that the evidence showed Defendant Nation carefully, properly and lawfully operated, maintained and controlled the tow car, in compliance with the laws relating to such operation and control, and that neither was his action careless, reckless or negligent, nor that the actions of said Defendant were the proximate cause of the resulting collision and the death of Plaintiff's Intestate which thereupon occurred.

## II.

Object and except to findings of fact contained in Paragraph V, on the grounds and for the reason that there was no evidence that Plaintiff's Intestate's Estate was diminished, depleted and damaged in the sum of Ten Thousand (\$10,000.00)

Dollars, or any sum, as a result of the death of said Plaintiff's Intestate.

III.

Object and except to findings of fact contained in Paragraph VI, on the grounds and for the reason that there was no evidence proving or tending to prove that the sole proximate cause of said collision was due to any act or action on the part of Defendant Nation, and on the further ground that the uncontroverted evidence showed that the car occupied by Plaintiff's Intestate was traveling at an excessive speed in view of the conditions then and there existing, and was not traveling at a properly reduced rate of speed while approaching the crest of a hill, and was traveling at a speed in excess of the legal and posted speed limit then and there existing, and was not under such control that it could be brought to a stop or maneuvered to safely avoid other automobiles or persons lawfully using the highway, and that such action on the part of the driver of the automobile of Plaintiff's Intestate, was the sole and proximate cause of said collision, or at least a contributing cause.

IV.

Objects and excepts to conclusion of law No. II on the grounds and for the reason that said conclusion is contrary to the evidence and contrary to the law.

V.

Objects and excepts to the judgment of the court entered herein on the grounds and for the reasons that it is contrary to the evidence and to the law.

## VI.

Objects and excepts to the court's failure to make proposed amended findings of fact, Nos. IV through XXXI, inclusive, as submitted by the Defendants, Griffin Buick, Inc., and J. W. Nation, and further objects and excepts to the Court's failure to make proposed amended conclusion of law No. II, as submitted by Defendants Griffin Buick, Inc., and J. W. Nation, and to the court's failure to enter judgment in the form submitted by Defendants Griffin Buick, Inc., and J. W. Nation, on the grounds and for the reasons that said findings of fact, conclusions of law, and judgment were supported by the uncontroverted testimony and the law, which clearly showed that Defendant J. W. Nation acted carefully and prudently and in conformance with all of his statutory duties while the driver of the automobile which was occupied by Plaintiff's Intestate was negligent in the respects hereinbefore set forth and that such negligence was the sole or contributing cause of the collision which resulted in the death of Plaintiff's Intestate.

Respectfully submitted,

GUST, ROSENFELD, DIVEL-  
BESS & ROBINETTE,

By /s/ JAMES F. HENDERSON,  
Attorneys for Defendants, Griffin Buick, Inc., a  
Corp., and J. W. Nation.

Affidavit of mailing attached.

[Endorsed]: Filed October 19, 1954.

[Title of District Court and Cause.]

Nos. 1921 and 1922

MOTION FOR NEW TRIAL

Come now Defendants and move the Court for an Order setting aside and vacating the findings of fact, conclusions of law and judgment rendered and entered in the above-entitled case in favor of the Plaintiff and against the Defendants, and granting the Defendants a new trial for the following reasons and upon the following grounds:

1. That the findings of fact are not justified by the evidence;
2. That the conclusions of law are not justified by the evidence;
3. That the judgment is not justified by the evidence;
4. That the findings of fact are contrary to the evidence;
5. That the conclusions of law are contrary to the evidence;
6. That the conclusions of law are contrary to the law;
7. That the judgment is contrary to the law.

Dated this 26th day of October, 1954.

GUST, ROSENFELD, DIVEL-  
BESS & ROBINETTE,

By /s/ JAMES F. HENDERSON,  
Attorneys for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed October 26, 1954.

[Title of District Court and Cause.]

Nos. 1921 and 1922

MINUTE ENTRY OF FEBRUARY 21, 1955

Honorable Dave W. Ling, United States District  
Judge, Presiding.

Defendants' Motion for New Trial comes on regularly for hearing this day. Ronald Webster, Esq., is present for the plaintiffs. James Henderson, Esq., is present for the defendants. On motion of counsel for the defendants,

It Is Ordered that said Motion for New Trial be and it is amended to show the same as a Motion to Set Aside Findings of Fact and Conclusions of Law and Judgments in Civ-1921 and Civ-1922 and to Enter Judgments for the Defendants, or in the Alternative for a New Trial.

It Is Ordered that said Motion to Set Aside Findings of Fact and Conclusions of Law and Judgment and Enter Judgment for the Defendants, or in the Alternative for a New Trial, in each of cases Civ-1921 and Civ-1922, is denied.

On motion of counsel for the defendants,

It Is Ordered that execution of judgment be stayed for a period of 10 days from this date.

(Docketed February 21, 1955.)

[Title of District Court and Cause.]

No. 1921

NOTICE OF APPEAL

Notice is hereby given that Griffen Buick, Inc., and J. W. Nation, Defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit, from the final Judgment entered in this action, and from the Order Denying Defendants' Motion to Set Aside Findings of Fact, Conclusions of Law, and Judgment entered thereon, and to enter Judgment for Defendants, or in the alternative, for a new trial entered in this action on February 21, 1955.

Dated March 3rd, 1955.

GUST, ROSENFELD, DIVEL-  
BESS & ROBINETTE,

By /s/ JAMES F. HENDERSON,  
Attorneys for Appellants.

[Endorsed]: Filed March 3, 1955.

---

[Title of District Court and Cause.]

No. 1922

NOTICE OF APPEAL

Notice is hereby given that Griffen Buick, Inc., and J. W. Nation, Defendants above named, hereby appeal to the United States Court of Appeals for

the Ninth Circuit, from the final Judgment entered in this action, and from the Order denying Defendants' Motion to Set Aside Findings of Fact, Conclusions of Law, and Judgment entered thereon, and to enter Judgment for Defendants, or, in the alternative, for a new trial entered in this action on February 21, 1955.

Dated March 3rd, 1955.

GUST, ROSENFELD, DIVEL-  
BESS & ROBINETTE,

By /s/ JAMES F. HENDERSON,  
Attorneys for Appellants.

[Endorsed]: Filed March 3, 1955.

---

[Title of District Court and Cause.]

Nos. 1921 and 1922

### STATEMENT OF POINTS

Appellants, Defendants above named, state that the points upon which they intend to rely on appeal in this consolidated action, are as follows:

#### I.

The Court erred in finding that the motor vehicle in which Plaintiff's Intestates were riding, was being operated in a careful and prudent manner and with due regard for the safety of others on the highway.



II.

The Court erred in finding that Defendant-Appellant J. W. Nation, wantonly and wilfully placed said tow car, and caused said tow car to be placed on said highway in such a position and location as to imperil the lives and property of persons traveling in motor vehicles on said highway.

III.

The Court erred in finding that Defendant-Appellant J. W. Nation, wilfully and wantonly failed and neglected to give and place suitable warnings of the position and location of said tow car.

IV.

The Court erred in finding that said Defendant Nation recklessly and negligently operated, maintained and controlled said tow car.

V.

The Court erred in finding that the collision and the injuries and death of Plaintiff's Intestates directly and proximately resulted from wilful and wanton misconduct and from recklessness and negligence of Defendant, J. W. Nation.

VI.

The Court erred in finding that the Estates of Plaintiff's Intestates was diminished, depleted and damaged in any sum whatsoever as a direct and proximate result of "said wilful and wanton misconduct, and of said recklessness and negligence on the part of Defendant Nation."

## VII.

The Court erred in finding that the sole, proximate cause of said collision and of the deaths of Plaintiff's Intestates, and of the damage to the estates thereof, was the "said wilful and wanton misconduct and said recklessness and negligence of said Defendant Nation."

## VIII.

The Court erred in finding that at the time and place of said accident, the Plaintiff's Intestate was not guilty of any negligence or want of care which contributed as a proximate cause of said collision or of said deaths or of said damages.

## IX.

The Court erred in making the conclusion of law that the Plaintiff's were entitled to any judgment whatsoever against the Defendants, Griffen Buick, Inc., and J. W. Nation, jointly and severally in either Civ. 1921 Phoenix or Civ. 1922 Phoenix.

## X.

The Court erred in failing to find that General Grant Greer, Jr., deceased, was guilty of contributory negligence.

## XI.

The Court erred in failing to find that General Grant Greer, Jr., deceased, was guilty of negligence.

## XII.

The Court erred in failing to find General Grant Greer, Jr., deceased, was guilty of gross, wilful and wanton negligence.

XIII.

The Court erred in failing to find that General Grant Greer, Jr., deceased, was negligent and that such negligence was imputed to Rubby Greer.

XIV.

The Court erred in failing to find that Defendant-Appellant J. W. Nation, and therefore Defendant-Appellant Griffen Buick, Inc., was not guilty of any negligence.

XV.

The Court erred in denying Defendant's Motion for Judgment for Defendants.

XVI.

The Court erred in denying Defendant's Motion to Set Aside Findings of Fact and Conclusions of Law, Judgment, and to enter Judgment for Defendants, or in the alternative for a New Trial.

XVII.

The Findings of Fact, Conclusions of Law and Judgments are not justified by the evidence and are contrary to the evidence and to the law in both Civ. 1921 Phoenix and Civ. 1922 Phoenix.

Dated this 10th day of March, 1955.

GUST, ROSENFELD, DIVEL-  
BESS & ROBINETTE,

By /s/ JAMES F. HENDERSON,  
Attorneys for Appellants.

Service of Copy acknowledged.

[Endorsed]: Filed March 10, 1955.

[Title of District Court and Cause.]

Nos. 1921 and 1922

## STIPULATION

Comes now Plaintiff in each of the above-entitled causes, by and through his attorneys of record, C. Ray Robinson, Thomas L. Berkley, and Clark and Clark, by Ronald Webster, and the Defendants by and through their attorneys, Gust, Rosenfeld, Divelbess & Robinette by James F. Henderson, and stipulate and agree that the above-entitled causes may, subject to approval by the United States District Court for the District of Arizona, and the United States Court of Appeals for the Ninth Circuit, be consolidated on appeal on the grounds that these cases were consolidated and tried together in the United States District Court for the District of Arizona, and that all proceedings on each of them were consolidated proceedings in said District Court; and for the further reason that such consolidation on appeal will avoid an undue burden upon the Court and will avoid hardship and additional expense to each and all of the parties hereto.

C. RAY ROBINSON,

THOMAS L. BERKLEY,

CLARK &amp; CLARK,

By /s/ RONALD WEBSTER, JR.,  
Attorneys for Plaintiff.

GUST, ROSENFELD, DIVEL-  
BESS & ROBINETTE,

By /s/ JAMES F. HENDERSON,  
Attorneys for Defendants.

[Endorsed]: Filed March 10, 1955.

---

[Title of District Court and Cause.]

Nos. 1921 and 1922

ORDER

Good Cause appearing therefor,

It is Ordered that the time for filing the record on appeal and docketing the appeals herein in the United States Court of Appeals for the Ninth Circuit be, and it is hereby, extended to and including April 30, 1955.

Dated at Phoenix, Arizona, this 12th day of April, 1955.

/s/ DAVE W. LING,  
United States District Judge.

[Endorsed]: Filed April 12, 1955.

In the District Court of the United States,  
District of Arizona

Civil 1922

LONDON EVANS, Administrator of the Estate of  
RUBBY GREER, Deceased,

Plaintiff,

vs.

GRIFFEN BUICK, INC., an Arizona Corpora-  
tion, and J. W. NATION,

Defendants.

Civil 1921

LONDON EVANS, Administator of the Estate of  
GENERAL GRANT GREER, JR., Deceased,

Plaintiff,

vs.

GRIFFEN BUICK, INC., an Arizona Corpora-  
tion, and J. W. NATION,

Defendants.

### TRANSCRIPT OF PROCEEDINGS

Proceedings had and evidence taken in the above-entitled cause before the Honorable Dave W. Ling, Judge of said court, in his courtroom in the United States Courthouse, at Phoenix, Arizona, on the 12th day of February, A.D. 1954, at ten o'clock a.m.

Present:

R. A. McCORMICK,  
CLARK & CLARK, By  
RONALD WEBSTER, JR., and  
THOMAS BERKLEY,

Appeared for Plaintiffs.

GUST, ROSENFELD, DIVELBESS & ROBINETTE, By  
JAMES F. HENDERSON and  
DEVENS GUST,

Appeared for Defendants.

The Clerk: Civil 1922, Phoenix, London Evans, etc., plaintiff, versus Griffen Buick, Inc., etc., et al., Defendants, for trial. Civil 1921, Phoenix, London Evans, etc., plaintiff, versus Griffen Buick, Inc., etc., et al., defendants, for trial.

Mr. Webster: Plaintiff is ready, your Honor.

Mr. Henderson: Defendants are ready, your Honor.

The Court: You may proceed.

Mr. Webster: If your Honor please, at this time I would like to present for association in this matter two attorneys from the State of California, who are duly admitted to practice there in the federal courts of the districts in that state, Mr. McCormick of the office of Mr. Robinson, who [2\*] is attorney of record, and Mr. Thomas Berkley, who is appearing in his own name also.

---

\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

The Court: All right, the record may so show.

Mr. McCormick: We call Officer Cochran as our first witness.

(Thereupon, the plaintiffs, to maintain the issues on their parts, introduced the following evidence, to wit.)

LOUIS O. COCHRAN

called as a witness in behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. McCormick:

Q. Officer, what is your full name?

A. Louis O. Cochran.

Q. What is your business or occupation, officer?

A. Patrolman of the Arizona Highway Patrol.

Q. Where do you live?

A. Yuma, Arizona.

Q. How long have you been so occupied?

A. Four and one-half years.

Q. Directing your attention to the evening of December 23, 1952, did you have occasion to [3] investigate an accident?      A. Yes, I did.

Q. And about what time did you receive the call?

A. Approximately twenty minutes of eleven p.m.

Q. And where were you when you received this call?      A. At home.

Q. Did you proceed to the point of the accident?

A. Yes.



(Testimony of Louis O. Cochran.)

Q. And where was that with relation to Yuma?

A. It was two-tenths of a mile east of Mile Post Number 17 on Highway 80.

Q. How many miles would that be from Yuma, approximately?      A. From Yuma proper?

Q. Yes.

A. It would be seventeen miles. The mileage starts at the center of the Colorado bridge.

Q. Did you proceed alone to the scene of the accident?      A. Yes.

Q. And when you arrived there, about what time was it?

A. Approximately five minutes after eleven.

Q. And what did you observe insofar as the [4] vehicles involved were concerned?

A. In regard to vehicles involved?

Q. Yes.

A. There were three vehicles involved. One was a semi-trailer, the other a GMC wrecker truck, and the other a Buick sedan.

Q. All right. Where was the Buick sedan with relation to the trailer?

A. It was underneath the rear of the trailer.

Q. Did you also inspect the damage to the rear of the trailer?      A. Yes, I did.

Mr. McCormick: Mark this Exhibit for identification, please.

The Clerk: Plaintiff's Exhibit Number 1 for identification.

(Said object was marked as Plaintiff's Exhibit Number 1 for identification.)

(Testimony of Louis O. Cochran.)

Q. (By Mr. McCormick): Let me show you, Officer, what purports to be a view of the trailer, and ask you if you recognize it as such?

A. Yes, I believe it is.

Q. Does the damage which appears at the rear of that trailer in the photo fairly and accurately represent the damage that you observed to the [5] trailer at the scene of the accident? A. Yes.

Mr. McCormick: I will offer this in evidence, if the Court please, as Plaintiff's Exhibit Number 1.

The Court: Any objection?

Mr. Henderson: No objection, your Honor.

The Court: It may be received.

(Said photo was received in evidence and marked as Plaintiff's Exhibit Number 1.)

Q. (By Mr. McCormick): Officer, at the scene of the accident did you inspect the damage to the Buick automobile after it was pulled out from underneath the rear of the trailer?

A. Yes, I did.

Mr. McCormick: If you have no objection, counsel, do you mind if I simply put these in evidence?

Mr. Henderson: None whatsoever.

Q. (By Mr. McCormick): Officer, let me show you a series of photos purportedly of the Buick, taken from various angles, and ask you to inspect these (handing photos to witness).

A. Yes, sir. [6]

Q. Do all of those photos, Officer, fairly and ac-

(Testimony of Louis O. Cochran.)

curately represent the damage to the Buick automobile involved in this accident, as you observed it at the scene?      A. Yes.

Mr. McCormick: With the Court's permission, I will offer these as Plaintiff's Exhibits 2, 3, 4, 5, 6, 7 and 8.

The Clerk: Plaintiff's Exhibits 2, 3, 4, 5, 6, 7 and 8 in evidence.

(Said photographs were received in evidence and marked Plaintiff's Exhibits 2, 3, 4, 5, 6, 7 and 8.)

Q. (By Mr. McCormick): Now, Officer, you have described the third vehicle involved as a GMC tow truck?      A. Yes, that is right.

Q. And did you observe that truck at the scene of the accident?      A. Yes, I did.

Q. And did the truck carry any insignia on its sides or rear?      A. I believe so, yes.

Q. And what was the insignia, as you recall it?

A. Griffen Buick Company.

Q. Did you observe the damage to that [7] vehicle?      A. Yes.

Mr. McCormick: May these be marked for identification?

The Clerk: Plaintiff's Exhibits 9, 10, 11, and 12 for identification.

(Said photos were marked as Plaintiff's Exhibits 9, 10, 11, and 12 for identification.)

(Testimony of Louis O. Cochran.)

Q. (By Mr. McCormick): Officer, would you examine these four photos of what purports to be the tow truck involved in the accident?

A. Yes, that was the truck.

Q. That is the truck? A. Yes.

Q. And is the damage that appears on the left-hand side of that truck, does that fairly and accurately represent the damage to it as you recall it existing at the scene of the accident?

A. It does.

Q. And do the other views fairly and accurately represent the general condition of the truck as you observed it at the scene?

A. Yes, sir. It does.

Mr. McCormick: If the Court please, I will offer these in evidence as Plaintiff's Exhibits next in order. [8]

Mr. Henderson: No objection.

The Clerk: Plaintiff's Exhibits 9, 10, 11, and 12 in evidence.

(Said photographs were received in evidence and marked Plaintiff's Exhibits 9, 10, 11, and 12.)

Q. (By Mr. McCormick): Now, officer, are you generally familiar with the terrain and the roadway where this accident occurred?

A. Yes, sir.

Q. And had you been for many years prior to the accident? A. Yes.

(Testimony of Louis O. Cochran.)

Q. And have you had occasion to pass over it since the accident?

A. That happens to be my territory. I drive in it every day.

Q. Has there been any change of any kind in the general terrain, roadway and shoulders, and sides of the road since this accident happened?

A. No.

Mr. McCormick: Let me first offer both these photos as Plaintiff's Exhibits next in order for identification at this time, if your Honor please.

The Clerk: Plaintiff's Exhibits 13, 14 for [9] identification.

(Said photos were marked as Plaintiff's Exhibits 13 and 14 for identification.)

Q. (By Mr. McCormick): Officer, at the point at which you found the vehicles involved in this accident, as you would approach the point from an easterly direction going west, was there a knoll or sand hill to the right-hand side just prior to reaching the vehicles? A. Yes, there was.

Q. All right, let me show you Plaintiff's Exhibit 13 for identification, and ask you first if you recognize that as a photo depicting the approximate scene of this accident?

A. Yes, that is correct.

Q. And does the knoll that I have just questioned you about appear in that picture?

A. Yes, it does.

Q. Would you take this pen, if you will, and

(Testimony of Louis O. Cochran.)

indicate an arrow indicating the knoll to which you are referring?      A. (Witness complies.)

Q. Now, that photo, Plaintiff's Exhibit 13 for identification, fairly and accurately, then, portrays the scene of the accident and the roadway, looking back in an easterly direction, showing the terrain as [10] one would approach the scene?

A. That is right.

Q. And does it fairly and accurately depict the vehicle conditions as they were at the time this accident occurred?      A. Yes.

Q. Directing your attention to Plaintiff's Exhibit 14 for identification, do you recognize that as an approximate duplicate of Plaintiff's Exhibit Number 13?      A. Yes, I believe it is.

Q. Would you indicate the knoll in that picture also, please?      A. (Witness complies.)

Q. And does that picture generally, fairly and accurately portray the physical condition as it existed on the night of the accident, and showing the approach in an easterly direction, and coming west to the point where this accident occurred?

A. Yes.

Q. When you arrived at the scene, was the semi-trailer you have described in a position in the roadway which would be shown by this picture?

A. Not in the roadway.

Q. Well, would it be at a point which is [11] evidenced there by this picture?      A. Yes.

Q. Was that semi-trailer on or off the highway?

A. It was off the highway.

(Testimony of Louis O. Cochran.)

Q. To your knowledge, had it been moved prior to your arriving at the scene, subsequent to the accident?      A. No.

Q. Could you draw a rectangle for me on Plaintiff's Exhibit 14 for identification, to indicate the position of the semi-trailer as you observed it at the scene?

A. (Witness complies.) Really, I don't believe the picture shows far enough west in it to draw in where my truck was sitting.

Q. Well, let me put it this way. Could you indicate the side of the road on which you found the truck?      A. Yes, sir, I can do that.

Q. I wonder, could you label that "truck," please?      A. (Witness complies.)

Q. Now, that semi was attached to a tractor, was it not?      A. Yes, sir. [12]

Q. And which direction was the tractor facing?

A. It was facing in a southwesterly direction.

Q. Yes. Did you measure the nearest portion of that semi to the north side of the highway?

A. Yes, I did.

Mr. McCormick: Counsel, would you mind if I labeled North, South, East and West on this photo?

Mr. Henderson: Pardon?

Mr. McCormick: Just draw an arrow, North, South, East, and West?

Mr. Henderson: Yes.

Mr. McCormick: Do you have any objection?

Mr. Henderson: That is all right.

(Counsel marks photos.)

(Testimony of Louis O. Cochran.)

Q. (By Mr. McCormick): So that as we view Plaintiff's Exhibit 14 for identification, the semi would have been on the north side of the highway?

A. That is correct.

Q. Did you measure how far off the highway it was? A. It was four feet.

Q. Four feet off the highway? A. Yes.

Q. Let me show you next, Officer, a view taken approximately 1,000 feet back from the point [13] at which the accident occurred, and ask you if you recognize it as a view taken from the east side looking west as you approached the scene of this accident? A. Yes.

Q. Does that fairly and accurately represent the roadway and the general condition of the terrain as depicted in that picture, as pertained to the night of the accident? A. It does.

Mr. McCormick: I will offer this in evidence as the next exhibit in order, if the Court please.

Q. (By Mr. McCormick): Let me show you a view which purportedly is taken looking the same way, but at a point approximately 800 feet prior to reaching the scene of the accident, and ask if you recognize such?

Mr. Henderson: If it please the Court, may I reserve objection until he has gone through all of these? I have objections to certain pictures.

Mr. McCormick: All right. Perhaps I better have them marked for identification at this time.

The Clerk: Plaintiff's Exhibit 15 for identification.



(Testimony of Louis O. Cochran.)

(Said photo was marked Plaintiff's Exhibit 15 for identification.) [14]

Q. (By Mr. McCormick): Will you answer the question, Officer?

The Witness: Yes.

Q. (By Mr. McCormick): And does that fairly and accurately represent the roadway and the terrain, and the general physical conditions leading up to the point at which this accident occurred?

A. That is correct.

Mr. McCormick: Would you mark that for identification at this time as Exhibit 16?

And will you mark that 17, please, and this one 18, for identification?

The Clerk: Plaintiff's Exhibits 16, 17 and 18 for identification.

(Said photos were marked as Plaintiff's Exhibits 16, 17 and 18 for identification.)

Q. (By Mr. McCormick): Let me show you next Plaintiff's Exhibit 18 for identification, which purports to be a view taken from the east looking west, at approximately 400 feet from the east of the point of impact, or the scene of the accident, and ask you if you recognize it as such?

A. Yes. [15]

Q. And does it fairly and accurately portray the roadway, and the general physical conditions as you observed them to exist on the night this accident occurred?

A. Yes.

(Testimony of Louis O. Cochran.)

Q. Then let me show you Plaintiff's Exhibit 17 for identification, which purports to be a view looking in the same direction, taken approximately 300 feet back from the point at which you found these vehicles, and ask you if that fairly and accurately portrays the roadway and the general physical condition——

Mr. Henderson: Excuse me. Is that 17?

Mr. McCormick: Yes.

Q. (By Mr. McCormick): ——on the night this accident occurred? A. Yes.

Mr. McCormick: Now, at this time, if the Court please, I will offer into evidence Plaintiff's Exhibits 15, 16, 17 and 18.

Mr. Henderson: May I ask a question on voir dire?

The Court: Yes.

Q. (By Mr. Henderson): I hand you Plaintiff's Exhibit 15 for identification, and ask you if you can tell how high above the roadway the camera was placed at the [16] time that picture was taken?

A. I don't want to be sure on that. Possibly from the height of a man standing in the center of the road and holding the camera.

Q. Can you tell from the picture the distance from where the picture is taken to the slight bend in the road?

A. Along approximately the northerly road at that point.

Q. Can you see in that picture the scene of this accident?

(Testimony of Louis O. Cochran.)

A. From this point, I don't believe so.

Q. And how far on down the road, or this way, would be purely hypothetical?

A. I didn't understand the question, sir.

Q. In other words, it would be just a guess if you attempted to locate where this spot in the road was from the scene of the accident?

A. It would be an approximate figure, yes.

Mr. Henderson: Your Honor, we object to the introduction of that picture in evidence, due to the failure to establish the relationship of that particular part of the road to the scene of the accident.

Mr. McCormick: If the Court please, could I ask the witness just one question? I believe I [17] could take care of that.

The Court: All right.

Q. (By Mr. McCormick): Officer Cochran, do you observe in Plaintiff's Exhibit Number 15 the knoll that you heretofore pointed out in Plaintiff's Exhibits 3 and 4, I believe it is?

A. Yes, I do.

Q. And do you observe in Plaintiff's Exhibits 16, 17 and 18 the same knoll that you have heretofore pointed out in Plaintiff's Exhibits 3 and 4, which were closeups?           A. Yes, sir.

Mr. Henderson: I think that would make it a question——

The Court: Where is the knoll? Show me the knoll.

Q. (By Mr. McCormick): Will you point out

(Testimony of Louis O. Cochran.)

the knoll?           A. It is this ridge in here.

Q. Would you point the knoll out on all of them, if you please?

A. Yes. (Witness marks on exhibits.)

Mr. Gust: If it please the Court, I think that the purpose of these pictures is to show a purported obstruction to the view. I think if that [18] is the case, I think it is incumbent on the plaintiff to show the height from which the pictures were taken.

Mr. McCormick: My position is that the pictures were taken so far away that whether it was waist high or otherwise would make no difference.

Mr. Henderson: Our position is that the knoll would appear to be a greater obstruction than it actually is for somebody driving an automobile.

The Court: I think I can get a pretty good idea of the relative height there of an automobile, whether they can see the knoll driving.

Mr. McCormick: If the Court desires, I have here in the courtroom our investigator, under whose direction these pictures were taken, who was present at the time they were taken. If I may withdraw the Officer for a moment, I should be happy to put him on.

The Court: Go ahead with the Officer and reserve the offer.

Mr. McCormick: I have just one more picture. I showed this to you already. Mark this for identification, please.

The Clerk: Plaintiff's Exhibit 19 for identification. [19]

(Testimony of Louis O. Cochran.)

(Said photo was marked Plaintiff's Exhibit 19 for identification.)

Q. (By Mr. McCormick): Officer, let me show you Plaintiff's Exhibit 19 for identification, and ask you if you recognize that as a picture showing the approximate scene of this accident?

A. Yes, it appears to be.

Q. All right. Does that picture portray the point at which you observed the trailer off to the north side of the road?

A. Yes, I believe that does.

Q. Could you now draw a rectangle with this pencil showing the approximate position of that trailer with relation to the westbound lane?

A. (Witness complies.)

Q. And the distance from the left-hand side of that trailer to the right-hand side of the westbound lane you said is four feet?

A. Yes. That is about it.

Mr. McCormick: All right. Let us label that trailer. (Counsel marks on photo.)

Could I label four feet in here also?

Mr. Henderson: Yes.

Mr. McCormick: I will offer this Plaintiff's Exhibit next in order, if the Court please. [20]

Mr. Henderson: No objections to 19.

The Court: It may be received in evidence.

The Clerk: Plaintiff's Exhibit 19 in evidence.

(Said photo was received in evidence and marked Plaintiff's Exhibit 19.)

(Testimony of Louis O. Cochran.)

Q. (By Mr. McCormick): Now, Officer, when you arrived at the scene of the accident, did you determine who were the operators of the three vehicles involved? A. Yes.

Q. Taking the tractor and semi-trailer first, who was the operator of that vehicle?

A. Joseph Herman Zektzer.

Q. And then directing your attention to the operator of the tow truck, did you determine who that was? A. Yes.

Q. Who was that?

A. J. W. Orby Nation, N-a-t-i-o-n.

Q. Then directing your attention to the Buick automobile, did you determine who the occupants of that Buick automobile were? A. Yes.

Q. Who were they?

A. Reverend General Grant Greer.

Reverend General Grant Greer and his [21] wife Rubby Greer, Rubby Jewel Greer.

Q. How did you make that identification, Officer?

A. Through papers and documents in their purses.

Q. Did you determine the registration, the ownership and registration of the Buick automobile?

A. Yes.

Q. What was that?

A. It was registered to a church. I don't recall the name of it at this time.

Q. All right. Now, then, did you observe any skid or tire marks leading up to the rear end of

(Testimony of Louis O. Cochran.)

this Buick?           A. There were no skid marks.

Q. All right. And you have already described that the Buick was in underneath the semi-trailer, which was four feet off on the right-hand side of the road, as you drove west?

A. Yes, that is right.

Q. Where did you observe the tow truck?

A. At the time I arrived, the tow car was approximately thirty feet east of the wrecked Buick, and sitting in a northeasterly direction on the north shoulder of the road. [22]

Q. At that time, was it completely off the paved portion of the road?           A. Yes, it was.

Q. And had you determined that it had been moved prior to your arrival at the scene?

A. Yes, that was determined.

Q. All right. Now, what was the condition of General Grant Greer and his wife as you observed it?           A. They were deceased.

Q. They were still in the Buick?

A. They were, yes.

Q. When you arrived at the scene of the accident, did you come from a westerly direction going east, is that correct?           A. That is right.

Q. What, if anything, did you observe at the scene by way of flares, or pots, or red lights, or other warning devices?

A. There were red fusees, burning fusees on the roadway. I believe there was one directly opposite the wrecked vehicles in the center of the road.

(Testimony of Louis O. Cochran.)

Q. When you say one, what do you mean, a fusee?

A. One fusee, and then east of the wrecked [23] vehicles about 100 yards there was another burning fusee.

Q. And where was that with relation to the roadway?

A. It was on the north shoulder of the roadway.

Q. On the shoulder. Did you observe any west-erly?

A. Not when I arrived. I believe that there had been one, but it had burned out, and I placed flares shortly after arriving myself.

Q. You placed them? A. Yes.

Q. Now, incidentally, what are the widths of those lanes?

A. The complete width of the pavement at that point is 39 feet, and I suppose the center line di-rectly divides that, yes.

Q. Now, at the scene of the accident, Officer, did you observe Mr. Nation, the man who operated the tow truck? A. Yes.

Q. And do you recognize him here in the court room? A. Yes, he is here.

Q. Did you have a conversation with him at [24] the scene of the accident? A. Yes, I did.

Q. And who was present during that conversa-tion?

A. The driver of the semi, I believe, was there at the time, and also there were a couple of attend-ants from an ambulance there.



(Testimony of Louis O. Cochran.)

Q. And what was said during that conversation between you and Mr. Nation?

A. I asked what had happened, and he stated that he had been called to pull the semi out of the sand, that it got stuck off the road in the deep sand, and that he had attempted to pull it out in a south-westerly direction, but had succeeded in putting it deeper into the sand, and then had reversed the procedure, and had gone to the back of the semi, hooking onto the back of it, and watching it back, and had almost got it back out of the sand where he could drag it back up on the road.

Q. Did he tell you the position of his tow truck as he was attempting to pull the trailer rearward?

A. Yes, he showed me on the pavement where he said he had been sitting.

Q. And where did he show you? [25]

A. It was approximately four feet south of the edge of the pavement, of the north edge of the pavement, and with the tow truck heading in an easterly direction.

Q. And did he show you how far his tow truck had extended into the westbound northerly lane?

A. Well, the point he showed me was—would have been the left side of the wrecker where it had sat, and judging from that, why you could surmise where the other side of the vehicle would have been in regard to the traffic.

Q. And where would that have been with relation to the white line?

(Testimony of Louis O. Cochran.)

A. It would have been approximately ten feet from the center line.

Q. And would that be the left side of the tow truck, or the right side?

A. The right side of the tow truck.

Q. As it would face east?

A. As it faced east, yes.

Q. Did you have any conversation with defendant Nation in regard to what type and character of warning devices were out at the time of this accident?      A. Yes.

Q. And what generally was that conversation, as [26] you recall it?

A. He stated that they had put out flares, or burning fusees, that is what they were, and I believe that is the extent of it.

Q. I beg your pardon?

A. I say, I believe that is the extent of it.

Q. Did he point out to you where those fusees were placed with relation to the eastern side of the point of impact of the vehicles?      A. Yes.

Q. And where was that?

A. It was directly opposite the point of the knoll that is shown on the pictures, and I would say approximately 100 yards east of the point of impact.

Q. One hundred yards?      A. Yes.

Q. And was there any conversation about that fusee having been run over?

A. Not that particular fusee. It was burning at the time I arrived.

(Testimony of Louis O. Cochran.)

Q. Oh. Could I interrupt just a minute, Officer?

Did he state to you that the fusee burning at the time you arrived was the same one burning at the time this accident happened? [27]

A. No. I believe that he stated that there had been two sets of fusees put out, and that the first one was the one that had been run over.

Q. I see.

A. By either the Buick that had run under the semi, or some car following close behind.

Q. When he referred to the fusees that had been run over, did he refer to the one that was out at the time of the accident on the eastern side of the point of impact? A. Yes.

Q. Did you, Officer, make a search for a damaged or run-over fusee? A. Yes, I did.

Q. Were you able to find any evidence of any damage to a run-over fusee?

A. I looked for it that night, and also went back the next morning to check the scene, and I could find no damaged flare.

Q. By the way, Officer, how high is that knoll that appears in the photos introduced in evidence?

A. Well, I have never measured that, sir, but I would say that from the level of the roadway to its highest point would be approximately 15 feet.

Q. All right, and does the point at which [28] this accident occurred, at that point, is the road straight or is it a curve? A. It is a curve.

Q. And as you would be coming west, it would curve which way, to your right or left?

(Testimony of Louis O. Cochran.)

A. It would curve to the right.

Q. And is the roadway at that point level, or is there a grade? A. There is a grade.

Q. And as you would be coming west approaching the point at which this accident occurred, would you be going up or down hill?

A. Going uphill.

Q. Did you ask Mr. Nation the time at which this accident occurred? A. Yes.

Q. And what did he say?

A. The time that was given me was 10:15 p.m.

The Court: How far east was Yuma? I didn't hear you.

The Witness: Seventeen miles.

Mr. McCormick: I have no further questions.

The Court: Do you gentlemen have any questions?

Mr. Henderson: Yes, your Honor. [29]

### Cross-Examination

By Mr. Henderson:

Q. Did you determine how far off of the north edge of the highway these fusees were placed?

A. A foot or so.

Q. And did you determine whether there was any other type of warning in addition to the fusee located at the scene of the accident by Mr. Nation?

A. There were none that I saw.

Q. During this conversation with Mr. Nation,

(Testimony of Louis O. Cochran.)

did he indicate to you whether or not any glass reflectors had been placed as a warning?

A. I don't recall that, sir.

Q. Would it be possible, in this discussion of the Buick having run over a fusee, that it might have involved a reflector rather than a fusee?

A. That is possible. We call a fusee a fusee. We don't call it a flare, and to the general public, fusees are flares. And I believe he spoke of it as a flare.

Now, he possibly could have meant that it was a reflector-type flare.

Q. Now, at that particular point in the road, are there at the side of the highway any of these side reflectors, I guess we would call them, put up by the highway department to denote the edge of [30] the pavement? A. Yes, there were.

Q. And were there any of those reflectors between the knoll of which you speak and the scene of the actual accident?

A. Yes. There were, I believe, two, or possibly three.

Q. Did you determine whether any of those reflectors had been damaged?

A. One of them had been run over by the Buick.

Q. And where was that reflector in relation to the point of collision?

A. At approximately 35 feet back of the point of impact of the semi.

Q. Would that be east of the semi?

A. Yes.

(Testimony of Louis O. Cochran.)

Q. And how far were those located off the edge of the highway?

A. Those are set about a foot or a foot and a half off the edge of the pavement.

Q. Now, you have stated that the knoll was approximately 15 feet above the road level at its highest point?      A. Yes.

Q. How far to the north edge of the highway was the highest point of the knoll? Was it right at [31] the edge of the highway?

A. No; it would be about 50 feet back from the edge of the pavement.

Q. In other words, then, it sloped upwards from the edge of the highway up to the high point, which was 50 feet north of the north edge of the highway?

A. Yes; that is correct.

Q. And the slope started from the edge of the highway, did it, and went gradually up to 50 feet?

A. No; it was not too gradual. It was rather a round slope.

Q. But the entire slope to the high point covered 50 feet?      A. Yes.

Q. About what is the percentage of the uphill grade the Buick would have traveled as it approached the point of collision?

A. I would say two per cent grade.

Q. Did you note the weather conditions on the night of this accident?      A. Yes.

Q. What were those conditions?

A. It was a starlight night, and no clouds, and the road was dry.

(Testimony of Louis O. Cochran.)

Q. And was the moon out that night? [32]

A. No, sir; no moon.

Q. Were you able to establish the point of impact between the Buick and the wrecker?

A. Only by the debris that was left on the highway at the point where the impact was said to have occurred.

Q. And did that debris substantiate what had been told you as to the place of impact?

A. Yes, it did.

Q. And where was that point of impact from the north edge of the highway?

A. Four feet from the north edge of the pavement.

Q. That would be four feet south of the pavement, or north?

A. Four feet south of the north edge of the pavement.

Q. Now, Officer, were you able to determine the course of the Buick automobile from the time it first collided with the wrecker until it finally came to rest?      A. Yes.

Q. How were you able to determine that course?

A. By the marks of the tires in the sand.

Q. And what was the point of impact between the Buick and the wrecker? [33]

That question may be a little confusing. What I am trying to get at is, what parts of the Buick and the wrecker collided?

A. The wrecker was apparently hit on the left front bumper, and then the damage continued on

(Testimony of Louis O. Cochran.)

back down the left side, all the way back, and side-swiping below, is what I would call it.

Q. Then the Buick came in contact with the wrecker and glanced off to its right, and went under the back end of the trailer?

A. No; it was more of a straight line. The tracks of the Buick came directly off the curve, had the curve continued in its northwesterly direction. And the tracks of the Buick were in a direct line. After hitting the wrecker, they didn't swerve, they just continued straight up in the same direction.

Q. Did you determine the condition of that shoulder on the left side of the road while you were there?      A. Yes.

Q. And what is the composition of the shoulder?

A. For a couple of feet it is made up of decomposed granite, I believe, and clay, and, then, for the, well, indefinite distance out there, it is just desert, pure sand. And at that point it was [34] what we would call blow sand. It was, rather, a very soft, light mixture.

Q. About how deep was the blow sand?

A. I would say the semi was stuck about eight inches deep in it.

Q. About eight inches in the sand?

A. Yes.

Q. Did you inspect the inside of the Buick when you arrived at the scene of the accident?

A. Yes. I did.

Q. And what did you find in the Buick besides the bodies of the decedents?



(Testimony of Louis O. Cochran.)

A. The clothing of the parties, and there was quite a number of childrens' clothing and childrens' toys.

And also packages of food, I think there was half a loaf of bread, and other groceries in the car.

Q. Were these open food?           A. Yes.

Q. Did you determine at your investigation whether or not at the time of this collision the tow truck had been hooked onto the back of the trailer?

A. Yes; it had apparently been hooked on, because the boom had been jerked loose from the [35] wrecker.

Q. And could you determine whether or not the tow truck at that time was sitting with its gear disengaged, or with its brakes on?

A. I wouldn't be able to state that, sir, because, as I said previously, the vehicle had been moved when I arrived.

Q. Were you able to determine whether the force of the impact of the Buick striking the back of the trailer had moved the trailer and tractor?

A. Yes; it could be determined.

Q. And how far did you determine that it had been moved?

A. It had moved it forward two feet.

Q. And was the tractor, were the tractor and trailer in a jackknife or still in a straight position?

A. No; the trailer was what I would call parallel to the road, and the tractor was sitting with the front end in a more southerly direction and nearer the highway.

(Testimony of Louis O. Cochran.)

Q. And did you inspect the under carriage of that trailer at all for damage?

A. Yes; I did.

Mr. Henderson: Mark this Defendants' Exhibit A for identification. [36]

Mr. McCormick: You can put them in if you want.

Mr. Henderson: All right.

The Court: They may be received.

The Clerk: Defendants' Exhibits A and B in evidence.

(Said photographs were received in evidence and marked as Defendants' Exhibits A and B.)

Q. (By Mr. Henderson): I hand you Defendants' Exhibit A in evidence, and ask you if you recognize that as a photograph of the part of the trailer in question? A. Yes.

Q. And does that fairly and accurately represent the condition of the under carriage of the trailer in question? A. That is correct.

Q. And I hand you Defendants' Exhibit B, and ask you if you recognize that as a picture of a part of the trailer in question? A. Yes.

Q. And does that fairly and accurately represent the condition which you found on your inspection?

A. It does. [37]

Q. Will you describe from Defendants' Exhibit A what damage you see there?

(Testimony of Louis O. Cochran.)

The Court: He doesn't have to take time to do that.

Mr. Henderson: All right, your Honor.

Q. (By Mr. Henderson): In both of these photographs which show the various pins or rivets that were sheered off on this under carriage, can you tell us the size of those rivets?

A. That was about a three-quarter-inch rivet.

Q. Did you determine how many rivets had been sheered off?

A. I believe there were five in that particular spring.

Q. Did you find any of the parts of these rivets?

A. Yes; the next morning I picked up the head of one of the rivets across the pavement, on the south side of the road.

Q. How far was that from the actual scene of the accident?      A. Approximately forty feet.

Q. Did you find any other damage relative to the under carriage of the truck?

A. At the rear end, yes, was damaged. [38]

Q. Did you find any damage to the back axle?

A. Only where the spring hangers were knocked loose. That is all that I recall.

Q. Now, had the under carriage been knocked loose from the trailer itself?

A. Yes; it was knocked slightly farther.

Q. And did you determine whether or not that trailer was loaded at the time of the accident?

A. There was only a partial load on it. I don't

(Testimony of Louis O. Cochran.)

recall the contents, but I recall the driver said he only had a partial load.

Q. Did you determine the weights of the tractor, trailer, or its loads?      A. No, I didn't.

The Court: We will have a brief recess at this time.

(Recess was had.)

The Court: You may proceed.

Mr. Henderson: If it please the Court, I would like at this time to withdraw my objections to Plaintiff's Exhibits 15, 16, 17 and 18 for identification.

The Court: Very well.

Mr. McCormick: I will reoffer them.

The Court: They may be received. [39]

The Clerk: Plaintiff's Exhibits 15, 16, 17 and 18 in evidence.

(Said photographs were received in evidence and marked Plaintiff's Exhibits 15, 16, 17 and 18.)

Mr. Henderson: Will you mark this for identification?

The Clerk: Defendants' Exhibit C for identification.

(Said picture was marked Defendants' Exhibit C for identification.)

Q. (By Mr. Henderson): I hand you Defendants' Exhibit C for identification, and ask you whether or not that represents the condition of the shoulder in question?      A. Yes, it does.

(Testimony of Louis O. Cochran.)

Q. Were you present when this photograph was taken?

A. I don't recall seeing the picture taken.

Q. Does this photograph fairly and accurately represent the tracks left by the Buick, and showing the position of the trailer at the point of impact?

A. Yes, it does.

Mr. Henderson: I offer this in evidence.

Mr. McCormick: I have no objection, as long as he is testifying that it fairly and accurately [40] represents the trailer.

The Clerk: Defendants' Exhibit C in evidence.

(Said photo was received in evidence and marked Defendants' Exhibit C.)

Q. (By Mr. Henderson): I hand you Plaintiff's Exhibit 10, which you have identified as the tow truck involved here.

A. Yes.

Q. Now, on that picture where the two lights which appear on the boom of the tow truck, were they on the tow truck on the night in question?

A. Yes, they were.

Q. Did you determine whether or not they were in operating condition at that time?

A. No; I don't recall seeing the lights burning.

Q. Would you put a circle around each of the boom lights on the tow truck, please?

A. (Witness complies.)

Q. Now, from your investigation of the damage to the vehicles involved here, from your determination of the condition of the shoulder, and the con-

(Testimony of Louis O. Cochran.)

dition of the highway, were you able to form an opinion as to the range of speed at which the Buick was traveling immediately prior to the impact?

Mr. McCormick: I will object to that, your [41] Honor, on the ground it calls for the opinion and conclusion of the witness, and something that is the province of the Court to decide from all of the evidence to be presented.

The Court: Probably so.

Mr. Henderson: What is the ruling?

The Court: I think that is so.

Q. (By Mr. Henderson): Mr. Cochran, did you determine whether or not any skid marks were left on the pavement?

A. That is correct. There were no skid marks on the pavement.

Q. There were no skid marks whatsoever?

A. None whatsoever.

Mr. Henderson: I have no further questions.

Mr. McCormick: Just a few questions, Officer.

### Redirect Examination

By Mr. McCormick:

Q. Officer, did I understand you to testify that you were present when the Defendants' Exhibit C was taken?

A. I don't recall the picture being taken, no. It is possible I could have been there. I was at the scene with several of the investigators. I don't know who took the picture. [42]

(Testimony of Louis O. Cochran.)

Q. Do you know the identity of the person who took the picture?      A. No, I don't.

Q. Or do you know when it was taken?

A. No.

Q. Do you know whether it was taken at night or in the day time?

A. It appears to have been taken in the day time.

Q. Is there anything about the tire marks that appear in that picture that lead you to believe they are the same tire marks that you observed at the scene of the accident?

A. Yes; I believe it is the same scene.

Q. Now, that picture does not, does it, purport to portray the entire length of the entire tire marks that you observed off the shoulder?      A. No.

Q. And those tire marks were how long in length?

A. From the point where they first left the pavement, where the back end wheel of the Buick left the pavement, to the rear of the Buick as it sat under the semi, was 44 feet.

Q. I think you said the curve, with the curve of the road, is that what you said in Mr. Henderson's examination? [43]

A. Yes; the point where they left the road, the Buick was following the curve of the road.

Q. Now, the rivet that you found across the road, I take it, was the next day, and I take it you have no idea how it got there?

A. That is correct. It was directly opposite

(Testimony of Louis O. Cochran.)

where the point of impact had occurred, and was some forty feet across the road. I don't know how it got there.

Q. And the reflector, did I understand you to say it was thirty-five feet back of the semi, and about a foot to a foot and a half off the highway?

A. That is approximately the measurements.

Q. Incidentally, Officer, I take it you ran the routine blood tests on the deceased, General Greer?

A. Yes.

Q. It was negative?

A. It was negative.

Mr. McCormick: That is all.

Mr. Henderson: Another question or two, Mr. Cochran.

#### Recross-Examination

By Mr. Henderson:

Q. Did these tire marks, these forty-four-foot tire [44] marks, did they indicate whether or not the brakes were on at that time?

A. It would be hard to say, because of the softness of the sand. The tire marks that were made where they first went off on the shoulder of the road were made by a rolling tire. You could see the prints of the tire in it.

But once it was in the deep sand, then whether it was rolling, or whether it was skidding couldn't be determined, because the sand was just too soft.

Q. Now, where was it in relation to the tow truck



(Testimony of Louis O. Cochran.)

that these first rolling tire marks in the sand appeared?

A. I don't recall measuring that distance, but I would say it was approximately 20 feet to the east of the wrecker, where the Buick first went onto the shoulder of the road.

Q. And those appeared to be rolling tire marks?

A. Yes.

Q. I hand you Plaintiff's Exhibit 15, which shows the knoll in question.

Would you indicate by an "X" mark the position of the flare that was placed along the highway to the east of the scene of the accident, on [45] that photograph, please?

Mr. McCormick: May I ask counsel what particular flare are you referring to?

Mr. Henderson: The flare that was placed east of the scene of the accident that the patrolman found on his arrival.

Mr. McCormick: Is that the flare he found at the time, or is this the Exhibit? There is testimony that the flare that he saw at the time that he arrived was not the same flare that was burning at the time of the accident.

Mr. Henderson: That is correct; that the one he found was a replacement of the previous flare, I believe.

Mr. McCormick: So that there is no confusion, you are talking about the flare that he observed when he got there?

Mr. Henderson: That is correct.

(Testimony of Louis O. Cochran.)

Mr. McCormick: All right.

(Witness marks Exhibit as requested.)

Q. (By Mr. Henderson): Would you draw a line out to the clear part and indicate the word "flare," please?

A. (Witness complies.)

Q. May I ask you to make the same [46] indications on Plaintiff's Exhibits 16, 17 and 18?

A. (Witness complies.) I can't mark it on number 17, because it doesn't show enough of the roadway.

Q. There isn't enough of the road shown on number 17?      A. That is correct.

Q. You mean by that, then, that the foreground of the picture is too far to the west of the location of the flare?      A. That is correct.

Q. I notice in Plaintiff's Exhibit 18 right near where you have marked the flare, there is a black and white striped post there. Is that one of the reflectors which you mentioned had been bent by the Buick near the scene of the accident?

A. It is similar to the one that was bent.

Q. How does it differ?

A. That one is about a hundred yards east of the one that was knocked down. That is the only difference.

Q. In other words, it was identical in appearance, shape, and size?      A. Yes.

Mr. Henderson: I have no further [47] questions.

(Testimony of Louis O. Cochran.)

Redirect Examination

By Mr. McCormick:

Q. Just two questions, Officer.

The flares that you have indicated the position of on Plaintiff's Exhibits 15, 16 and 18 were flares that were observed when you got to the scene of the accident? A. That is correct.

Q. They don't purport to be flares that were there at the time the accident occurred, as far as you know?

A. No. That is the approximate place that the flare was burning when I arrived at the scene.

Q. Then, as I understand your testimony, when you got there you put out additional flares?

A. Very soon after.

Q. Were these flares the fusee type?

A. Yes; they were the burning magnesium flare.

Q. What we would commonly call a fusee?

A. Yes.

Q. All right. Just one more question, Officer.

Having in mind the position of the semi-trailer as you observed it at the scene, and having in mind your experience and knowledge of the highway as you would approach from an easterly direction west at night, would the knoll which we have [48] discussed partially obstruct your vision if you were looking over to the point where you observed the semi?

(Testimony of Louis O. Cochran.)

A. It would completely hide the view at a certain point.

Mr. McCormick: No further questions.

#### Recross-Examination

By Mr. Henderson:

Q. Officer, at what distance east of the knoll would it completely hide the view?

A. I would say it would approximately be the 150-yard mark, and from there on until you reached a quarter of a mile east of the scene.

Q. Now, if you were as much as a half a mile east, or three-quarters of a mile east on the highway, and approaching this semi, could you see the semi back that far?

A. If it had lights on, you might, yes.

Q. Now, did you determine whether or not that semi was properly equipped with lights at the back end?

A. I don't recall the lights being on at the time I was there. I believe the tail and stop light were broken in the wreck.

Q. But the photograph which has been [49] introduced in evidence showing the back end of that trailer is a true representation?

A. It is, yes.

Q. I hand you Plaintiff's Exhibit 1, and ask you to circle the lights, as distinguished from reflectors, in the back of that trailer.

A. You mean stoplights?

(Testimony of Louis O. Cochran.)

Q. Yes; any lights that would be burning if the lights were on.

A. (Witness complies.) I believe that is it.

Q. Now, you circled eight lights on the back of this semi-trailer. Had those lights been on, then your testimony is that it would have been possible for a car coming from the east approaching the trailer a half to three-quarters of a mile away, to have seen them? A. Yes; that is correct.

Q. I believe your testimony also was that the tractor and trailer and the tow truck were located about 100 yards on west of the knoll in question?

A. Yes.

Q. Do you know what the visibility of these fusees is?

A. I know about how far I can see them down the road. [50]

Q. How far can you see them?

A. I can see them for a mile and a half to two miles.

Q. And where the fusee that you found east of the scene of the accident at the time of your arrival, where that was located, how far to the east of that was there a clear view so that an approaching car could see it?

A. Well, approximately three-quarters of a mile. The road at that point is a letter "S" curve, you might call it, and after it crosses the bridge to the east of the point of impact, it rises for almost the same level as where the accident occurred.

Q. Now, from a point on the north side of the

(Testimony of Louis O. Cochran.)

highway directly alongside the location of that fusee, could the road be seen clearly both to the east and to the west?      A. Only to the east.

Q. Only to the east, and none to the west, if you were alongside of that fusee?

A. You could only have seen approximately 150 feet—correction, 150 yards.

Q. You could see 150 yards on west of the fusee?

A. Yes.

Q. And that would be up to the location of [51] the collision, the scene of the accident?

A. Yes.

Mr. Henderson: No further questions.

Mr. McCormick: Two questions.

### Redirect Examination

By Mr. McCormick:

Q. Officer, when you arrived at the scene, did you find any electric lanterns of any kind or character at or about the scene?      A. No.

Mr. McCormick: No further questions.

Mr. Henderson: That is all.

The Court: That is all.

(Witness excused.)

Mr. McCormick: At this time the Plaintiffs will call the Defendant, J. W. Nation, for cross-examination as an adverse party.

J. W. ORBY NATION

called by the Plaintiff as an adverse witness under the rule, having been first duly sworn, testified as follows:

Direct Examination

By Mr. McCormick:

Q. Your name is J. W. Nation? [52]

A. Yes, sir.

Q. Is that spelled without an "S," N-a-t-i-o-n?

A. Yes.

Q. And the name Orby, is that part of your name?

A. Yes.

Q. J. W. Orby Nation? A. Yes.

Q. What is your age, Mr. Nation?

A. Thirty-two.

Q. And what is your residence?

A. 2519-8th Avenue, Yuma, Arizona.

Q. How long have you lived in the State of Arizona?

A. About seven years.

Q. What is your present business or occupation?

A. Body shop manager and wrecker driver for Buick people.

Q. Is that the same occupation you had on December 23, 1952?

A. It has been changed a little since then. I was a service station manager and wrecker driver.

Q. Directing your attention to December 23, 1952, at that time your primary task on behalf of your employers was the driving of a tow truck, was it not? [53]

A. Yes.

(Testimony of J. W. Orby Nation.)

Q. On that evening, you had occasion to go to the scene of an accident?

A. Yes, sir. No, sir, not the scene of an accident, sir.

Q. Oh, the scene of a disabled car?

A. Yes, sir.

Q. That was at whose request?

A. Mr. Zektzer.

Q. And had you any prior acquaintance with Mr. Zektzer? A. Yes, sir.

Q. How long had you known him?

A. Probably three months.

Q. Was that a social or business acquaintance?

A. Business.

Q. Business acquaintance. And on the evening of December 23rd, did he come to your place of business? A. Yes, sir.

Q. And did he tell you that his truck had broken down? A. Yes, sir.

Q. And did he tell you where?

A. Yes. [54]

Q. And where did he say it was broken down?

A. He said out on the highway, about fifteen, or sixteen miles east of Yuma.

Q. As I understand it, he requested that you take your tow truck, and come out and help pull it out, right? A. Yes, sir.

Q. By the way, your employer at that time was Griffen Buick, Incorporated? A. Yes, sir.

Q. And this was their tow truck that you were operating? A. Yes, sir.



(Testimony of J. W. Orby Nation.)

Q. And on the evening in question, you were operating it as their employee, and in the course and scope of your employment, correct?

A. Yes, sir.

Q. What time did you leave your place of business to go to the scene of this disabled truck?

A. I would say around nine-thirty.

Q. And did Mr. Zektzer ride out with you?

A. Yes, sir.

Q. And about what time did you arrive at the scene?

A. It was around ten o'clock, maybe a [55] little before, a little after.

Q. All right, about ten.

What did you do when you first got there?

A. I turned the tow truck around and parked it in front of the——

Q. In front of the tractor and semi?

A. Yes, sir.

Q. Was the semi actually stuck?

A. I don't know what you mean by stuck. It would have pulled out if the motor would have run.

Q. Then the wheels actually weren't down in the sand to the extent it wouldn't have run if the motor would have been in working condition?

A. That is right.

Q. As I understand it, some kind of a noise started, so the driver pulled off the road?

A. Yes, sir.

Q. How far, when you arrived at the scene of the accident, how far off the road was the trailer?

(Testimony of J. W. Orby Nation.)

A. About three or four feet, I guess.

Q. All right, and was it parallel to the west-bound lane on the north side of the highway?

A. Yes, sir.

Q. And the tractor, was that also parallel?

A. Yes, sir. [56]

Q. And, of course, it was directly in front of the trailer? A. Right.

Q. And that equipment was facing west, wasn't it? A. Yes, sir.

Q. When you arrived at the scene, where did you first park your tow truck?

A. In front of the stalled vehicle.

Q. You came from a westerly direction east, did you not? A. Yes, sir.

Q. Had you made a U-turn on the highway?

A. Yes.

Q. And pulled in front of the tractor?

A. Yes, sir.

Q. And then what did you do next?

A. Set out fusees.

Q. How many did you set out? A. Two.

Q. And where did you put them?

A. I put them, one about 100 yards behind the trailer.

Q. That would be east?

A. East, on the north side of the road.

Q. And where with relation to the westbound lane? [57]

A. Just as close to the edge of the road as I

(Testimony of J. W. Orby Nation.)

could put it, because it had a nail in it to stick up in the dirt.

Q. Then that wasn't out in the center of the lane, was it?           A. No, sir.

Q. It was over off the traversable portion along the shoulder?           A. Right.

Q. And that was a normal-type fusee?

A. Yes, sir.

Q. You knew that fusee would burn approximately twenty minutes, did you not?

A. Yes, sir.

Q. And when you arrived at the scene of this disabled truck, was there any warning signal of any kind at or about that truck?           A. No, sir.

Q. None whatever?           A. No, sir.

Q. Did you place any fusee immediately to the side of the disabled equipment?           A. No, sir.

Q. Did you place any other fusees, other than the one you have just described for us?

A. Placed one to the west. [58]

Q. How far to the west?

A. About 100 yards.

Q. About 100 yards also?           A. Yes.

Q. And was that also entirely off of the west-bound lane and onto the north shoulder?

A. Yes, sir.

Q. And off to where you could dig it down in the ground, right?           A. Stick it down, yes.

Q. That also was a fusee?           A. Yes, sir.

Q. Of the same type, that burned fifteen or twenty minutes?           A. That is right.

(Testimony of J. W. Orby Nation.)

Q. What did you do then?

A. I set out reflectors.

Q. What kind of reflectors were they?

A. They were just round reflectors.

Q. Are they the double type, one on top of the other?

A. Yes, sir.

Q. Where did you put those?

A. Right even with the fusee, only out in the highway.

Q. How far out into the highway? [59]

A. A little past—a little closer to the white line than it was to the outside of the highway.

Q. What is the width of those lanes at that point?

A. I think about three and one-half inches. I am not sure.

Q. I meant the width of the westbound lane, or the eastbound lane.

A. Oh, of the highway?

Q. Yes. A. About twenty feet.

Q. Then the reflectors that you placed would be approximately how far from the white line, in feet?

A. Probably eight or nine feet, something like that.

Q. Then after you did that, did you at any time place out any flare pots? A. No, sir.

Q. Did you at any time before you removed this truck place out any red lanterns? A. No.

Q. Were any flare pots or red lanterns placed

(Testimony of J. W. Orby Nation.)

out at any time up to the actual accident that occurred involving the Greers? [60]

A. No, sir.

Q. After you had placed out your fusees and your reflectors, what did you then do?

A. I hooked the cable of the tow truck onto the front of the truck.

Q. Out in the front of the tractor?

A. Yes, sir.

Q. Then what did you do?

A. I started to put the truck in gear to pull it.

Q. And did you make an attempt to pull it?

A. I did.

Q. Was that by actually towing it?

A. Yes, sir.

Q. All right. Was that successful?

A. No, sir.

Q. Then what did you do next?

A. I threw the winch in gear and tried to winch it.

Q. Could you explain for us the distinction between attempting to tow it out, and attempting to winch it out?

A. Well, the winch control is on the back and kind of on the side of the wrecker, so I threw the winch in gear and stepped back in the truck, and put my foot on the brake in the truck all the [61] time the motor was running.

Q. Do you have to put your foot on the brake all the time you are trying to winch it?

A. To keep it from rolling back, you do. It has

(Testimony of J. W. Orby Nation.)

an emergency brake you can set, but you can get more leverage by keeping all four wheel brakes on.

Q. Incidentally, I don't think I asked you. About what time did you arrive at the scene of this accident? A. It was around ten o'clock.

Q. So that it took you approximately half an hour to get there, would that be right?

A. I don't know if I left exactly at nine-thirty or not, but it is around that time.

Q. How much time elapsed after you got there until you attempted—until you put out your flares and reflectors and attempted to winch the truck forward or westward?

A. How long I was there before I put out the flares?

Q. No; how long were you there up until the time you were actually in the process of trying to tow this truck out?

A. Just a matter of minutes.

Q. How much time did you spend attempting to [62] tow the truck westward?

A. Probably four or five minutes.

Q. Mr. Nation, if the truck was not imbedded in the sand, and if your testimony is true that had it been in good mechanical condition, it could have been pulled out, was there a particular reason why you were unsuccessful in pulling it out in a westerly direction? A. Yes, sir.

Q. What was that?

A. Coming up on the highway from the west the slope was steeper in the front.

(Testimony of J. W. Orby Nation.)

Q. So then you were unsuccessful in attempting to pull it westward? A. Yes, sir.

Q. How much time did you spend in making that attempt? A. About four or five minutes.

Q. And then what did you do?

A. I just unhooked and pulled it right around to the back.

Q. And did you back into the rear end of the trailer? A. Back into it?

Q. Back into the rear end, up to the rear end?

A. No; I stopped quite a ways from it even. [63]

Q. How far? How much distance separated the rear end of the trailer and the rear end of your tow truck when you came to a stop?

A. About probably ten steps.

Q. What would that be, thirty feet?

A. Somewhere around there.

Q. And did you then hook onto the trailer?

A. Yes, sir.

Q. And in what manner?

A. I am not sure. I either hooked the line on the spring hammer, or the push bar. I am not positive which.

Q. Then did you commence to attempt to winch the truck backwards? A. Yes, sir.

Q. Were you successful in moving it?

A. Yes, sir.

Q. Prior to this accident? A. Yes, sir.

Q. Do you have any idea how much you moved it? A. I would say about two feet.

Q. About two feet. Then was it at that point

(Testimony of J. W. Orby Nation.)

that you observed this car coming from the east west?      A. Yes, sir.

Q. And how far away was that car when [64] you first observed it?

A. I would say between a half and three-quarters of a mile.

Q. And did you observe its lights?

A. Yes, sir.

Q. Did you form an opinion of its speed at that time?

A. Not right at that time, just after that, when I first looked at the lights, then watched it for a second, then I did.

Q. I take it you could tell within a matter of a second it was coming at a certain rate of speed?

A. Yes, sir.

Q. When you first observed that car, what lights were lit on the truck and tractor?

A. All of the lights.

Q. Every light was on the tractor and semi-trailer, was it not, every light that it had?

A. Not the brake light.

Q. But all of the clearance lights were on?

A. Yes, sir.

Q. And the headlights were on?      A. Yes.

Q. And they would be shining in a westerly direction? [65]      A. Yes, sir.

Q. And I take it that the clearance lights were up on the four corners of the truck, correct?

A. Right, sir.



(Testimony of J. W. Orby Nation.)

Q. And what lights did you have on your equipment?

A. I had the parking lights on, and the two lights in the back.

Q. You say parking lights, as distinguished from headlights?           A. Yes, sir.

Q. And I am still talking about when you first observed this approaching car, you did not have your headlights on, did you?           A. No, sir.

Q. All right. As I understand it, at the time that you saw this approaching vehicle, the tractor and semi-trailer was about four feet off the highway facing in a westerly direction, right?

A. Yes, sir.

Q. And there was roughly, oh, approximately thirty feet of chain, or whatever you call it?

A. Cable.

Q. Cable between the rear end of the semi-trailer and the rear end of your tow truck?

A. Yes, sir. [66]

Q. And your tow truck was partially out in the highway, wasn't it?           A. Yes, sir.

Q. As a matter of fact, I think in your deposition, I think you said your right front wheels were about three feet from the white line?

A. Yes, sir.

Q. And facing in an easterly direction?

A. Yes, sir.

Q. Would you take Plaintiff's Exhibit 14, if you would, and draw a—first, do you recognize that? Do you recognize this as the approximate scene of the

(Testimony of J. W. Orby Nation.)

accident in this area here? A. Yes.

Q. Do you recognize the knoll that was immediately east of the point where this accident occurred?

A. Yes, sir.

Q. And you recognize that as the view you had looking east as you were sitting in your tow truck?

A. Yes.

Q. Would you draw a square on that, having in mind the white line, indicating the approximate position of your truck, the approximate position of your tow truck when you first observed the [67] car coming from the east?

Mr. Henderson: Which Exhibit is that?

Mr. McCormick: I think it is 14, counsel. Yes, 14.

The Witness: Just a square?

Q. (By Mr. McCormick): Here is your white line. You testified in your deposition that the right-hand side of your tow truck was about three feet from the white line. That is what I want, the position of your tow truck.

A. This would be the right front wheels (indicating).

Q. All right.

A. (Witness marks Exhibit as requested.)

Q. All right, now, draw the back wheels.

A. (Witness marks Exhibit as requested.)

Q. Now, would you fill in a square around those four wheels to indicate the position of your truck?

A. (Witness marks Exhibit as requested.)

Q. And you were facing in this direction, right? (Indicating.) A. Yes, sir.

(Testimony of J. W. Orby Nation.)

Q. Now, do you think that you have that facing a little bit too much to the south, having in [68] mind your testimony that the semi-trailer was parallel to the westbound lane facing west?

A. No, I have got to come out that way to be on the highway at an angle.

Q. Actually, you were facing almost directly east, were you not?

A. It was quite a bit at an angle.

Q. Let me ask you this, were you facing more to the east, or more to the south?

A. More to the east.

Q. Doesn't that look to you like you have got it there facing more to the south?

Let us get at it this way.

Take Plaintiff's Exhibit Number 13, and draw in another rectangle to indicate the position of your tow truck when you observed this car coming from the east.

A. (Witness marks exhibit as requested.)

Q. Okay. Let us mark the directions again.

A. (Witness marks exhibit as requested.)

Q. Now, the distance from your right front fender to the white line would be approximately three feet, is that right?

A. About that, yes.

Mr. McCormick: All right, let us mark that in. [69]

All right, at this time, your Honor, I will offer in evidence Plaintiff's Exhibits Numbers 13 and 14.

Excuse me. One thing more.

Q. (By Mr. McCormick): Would you indicate

(Testimony of J. W. Orby Nation.)

the cable extending back to the rear of your truck, just the general direction of it?

A. (Witness marks exhibit as requested.)

Q. And do likewise on the other exhibit, please.

A. (Witness marks exhibit as requested.)

Mr. McCormick: I will offer them in evidence at this time, if the Court please.

The Court: Any objection?

Mr. Henderson: Let me see them, first.

No objection, your Honor.

The Clerk: Plaintiff's Exhibits 13 and 14 in evidence.

(Said photographs were received in evidence and marked Plaintiff's Exhibits 13 and 14, respectively.)

Q. (By Mr. McCormick): You have stated that you had just the parking lights on, right?

A. And the lights in the back. [70]

Q. Will you circle the two little parking lights that you had on as you saw this car approaching?

A. (Witness marks exhibit as requested.)

Q. And you did not have the headlights on?

A. No, sir.

Q. All right. Now, directing your attention to Plaintiff's Exhibit 10, when you say you had the back lights on, are those two circled the ones you had on? A. Yes, sir.

Q. Is one of them a red light? A. Yes, sir.

Q. And is the other just a plain light?

A. Yes, sir.

(Testimony of J. W. Orby Nation.)

Q. And do you have those facing back from your truck? You did, did you not?      A. Yes, sir.

Q. That red light is on a swivel, isn't it?

A. Yes, sir.

Q. And it could be turned around facing forward, couldn't it?

A. Yes; you could do it with a wrench.

Q. With a wrench you could turn that light around facing frontward rather than backward?

A. Yes, sir. [71]

Q. But you didn't do that?      A. No, sir.

Q. And you didn't do it with the white light either?      A. No, sir.

Q. Now, then, you continued to watch this car approach you, did you not?      A. Yes, sir.

Q. And I take it you paid particular attention to the traffic?      A. Yes, sir.

Q. And I take it that you recognized that, being out there in the position that you were, that you were creating a hazard, and, therefore, should pay particular attention, right?

A. I wouldn't say that I was creating a hazard.

Q. Well, you felt that you had best keep yourself in a position to warn anybody approaching, because of the job that you were doing there in pulling the truck forward, and because of your position on the highway, that is correct?      A. Yes, sir.

Q. Now, would you describe the course of this car as it continued to approach?

A. The course of it? [72]

Q. Yes. Did it weave to left or right, or just come right down the highway?

(Testimony of J. W. Orby Nation.)

A. Just came right straight down.

Q. And how far away from you was it when you formed an opinion as to its speed?

A. I would say probably half a mile.

Q. Half a mile?           A. Yes.

Q. And what was your opinion as you formed it at that time?

A. Well, I could hear the tires screaming on the highway like it was running fast, the wind of it.

Q. Did you base it upon hearing the tires on the highway? Did you form an opinion as to its speed?

A. I had an opinion in my mind, yes, sir.

Q. And what was that opinion?

A. I would say he was running around 100 miles an hour.

Q. All right. Not a little faster than that?

A. Probably could have been.

Q. All right; then, about half a mile away, you observed this car approaching at a speed of 100 miles an hour or better, correct?

A. No; I wouldn't say "or better." I would say around a hundred. [73]

Q. All right, 100 miles an hour. What did you do at that time?

A. I started blinking my headlights on and off.

Q. Did you blow your horn?           A. No, sir.

Q. And that is the first time that you put on the headlights, is that correct?           A. Yes, sir.

Q. In other words, the first time you put on the headlights after commencing your attempt to move

(Testimony of J. W. Orby Nation.)

the truck rearward?           A. Yes, sir.

Q. Your truck was sideswiped on the right-hand side by this Buick, was it not?           A. Yes.

Q. And as I understand it, it was in approximately the position that you have indicated on Exhibits 13 and 14 at the moment it was sideswiped, right?           A. Yes.

Q. In other words, with your right front wheels about three feet from the white line, correct?

A. Yes.

Q. Therefore, it is a fair statement, is it not, to say that from the time you observed this car approaching you a half a mile away at 100 [74] miles an hour, you made no attempt of any kind or character to back up your tow truck off the highway, did you?           A. No, sir.

The Court: It is 12:00 o'clock now. We will suspend until 1:00 o'clock.

(Thereupon, at 12:00 o'clock noon a recess was taken until 1:00 o'clock p.m. of the same day.) [75]

J. W. ORBY NATION

resumed the stand and testified as follows:

The Court: You may proceed.

Examination

(Continued)

By Mr. McCormick:

Q. Mr. Nation, as I recall it, just before the noon recess you had testified that your tow truck

(Testimony of J. W. Orby Nation.)

was in the position as indicated by you on Plaintiff's Exhibit 13, and you had observed the approach of the Buick car about a half a mile away, and fixed its speed at that time at 100 miles an hour, approximately, is that correct?      A. Yes, sir.

Q. And directing your attention to Plaintiff's Exhibit Number 9, which is a view of your pick-up truck, what is the over-all length of your truck, to the best of your estimation? What would you say? About fifteen feet?

A. Probably fifteen to eighteen feet.

Q. Fifteen to eighteen feet. All right. And do I recall your testimony that there was about thirty feet of cable separating you and the rear end of the trailer, right?      A. Yes, sir.

Q. Now, it was at that point when you observed this car coming at 100 miles an hour, about [77] half a mile away, that you commenced to flash your headlights on and off, right?      A. Yes, sir.

Q. And I take it the reason you did that was that you felt that you should try to warn him?

A. Yes, sir; he was not slowing up.

Q. He was not slowing up. And I take it from your observation he was completely unaware of the danger he had gotten himself into, right?

A. Yes, sir.

Q. Now, at that time, you were seated behind the steering wheel of your car?      A. Yes, sir.

Q. And your motor was running?

A. Yes, sir.

Q. And did you continue to blink your lights?



(Testimony of J. W. Orby Nation.)

A. Yes, sir.

Q. And blinked them right up until the impact with your tow truck?

A. Blinked them until just before the impact.

Q. I see. Now, then, how much time elapsed between the time that you first started blinking these lights when you saw this car half a mile away until the impact with your tow truck?

A. Oh, just a matter of seconds.

Q. Well, what would you say, ten to fifteen [78] seconds, something like that?

A. It was probably a little longer than that. Maybe twenty seconds, or something.

Q. About twenty seconds?

A. It is just a guess, sir.

Q. But it is your estimation? A. Yes, sir.

Q. All right. Now, this flare that you had placed to the east of the point at which this accident occurred, how far to the east did you say you placed it from the rear end of the semi-trailer?

A. About 100 yards.

Q. That would be about 300 feet?

A. Yes.

Q. And off on the shoulder? A. Yes, sir.

Q. And, now, this morning I think you testified that you first saw this car when it was three-quarters of a mile to a mile away?

A. Between a half and three-quarters, I believe.

Q. That was half a mile when you estimated its speed? A. Yes, sir.

Q. As distinguished from three-quarters?

(Testimony of J. W. Orby Nation.)

A. Yes. [79]

Mr. McCormick: I would like marked for identification at this time, if the Court please, a certified copy of the transcript of the Coroner's inquest held upon the bodies of General Grant Greer and Rubby Greer at Yuma, Arizona, December 26, 1952.

The Clerk: Plaintiff's Exhibit Number 20 for identification.

(Said document was marked as Plaintiff's Exhibit Number 20 for identification.)

Q. (By Mr. McCormick): Do you remember being called as a witness at the time of that hearing?

A. Yes, sir.

Mr. McCormick: Counsel, I am going to refer to a question and answer, but my copy of this is not numbered. I believe I can find it, however, on the copy that is marked for identification. Page 17, counsel, on line 9.

Mr. Henderson: All right.

Q. (By Mr. McCormick): Would you read, Mr. Nation, page 17, lines 9 to 24? Just read it to yourself. A. Yes.

Q. Now, let me ask you if at the time of that Inquest you were asked these questions and gave these answers: [80]

"Q. Where were you?

"A. Sitting in wrecker.

"Q. How far from wrecker was the Buick when you first saw it?

"A. One hundred fifty yards.

(Testimony of J. W. Orby Nation.)

“Q. Was it on the highway? A. Yes.

“Q. Were its headlights burning? A. Yes.

“Q. Exactly what happened then after you saw it?

“A. I saw it and had time to flash my lights on and off to try to get the attention of the driver.

“Q. What did you do? You turned on your lights?

“A. Yes. I jerked them on and off, blinked them.”

Did you give those answers to those questions at that time and place? A. Yes, sir.

Q. In other words, at the Coroner's Inquest you testified that you first saw this Buick when it was 150 yards from you, is that right?

A. I guess I did, sir.

Q. And in giving this testimony, when you [81] referred to “flashing my lights on and off,” you were referring to your headlights, were you not?

A. Yes, sir.

Q. And that was the first time you ever pulled on your headlights, correct? A. Yes, sir.

Q. Now, this car didn't change its direction from the time you first saw it, did it?

A. Well, it had to come around this little curve, I guess.

Q. I appreciate that, but I mean as far as any violent moves left or right? A. No, sir.

Q. The only change in direction was its coming around this curve? A. Yes, sir.

Q. And this accident happened on a curve,

(Testimony of J. W. Orby Nation.)

didn't it? A. A slight curve, yes.

Q. And you saw no increase or decrease in its speed, did you? A. No, sir.

Q. How much time elapsed, Mr. Nation, from the time you first arrived at the scene of this accident and set out your flares until the accident occurred? A. Probably fifteen minutes. [82]

Q. Could it have been as much as twenty minutes? A. I don't think so, sir.

Q. All right; now, then, the impact between the Buick and your tow truck was to his right side and your left side, that is correct, isn't it? A. No.

Q. Well, let me put it this way: The impact was between the driver's side of the Buick and the driver's side of your tow car? A. Yes, sir.

Q. In other words, his driver's side sideswiped your driver's side? A. Yes, sir.

Q. And then went into the rear of the trailer?

A. Yes, sir.

Q. All right. One thing more. The only wheel that was not on the westbound lane proper at the time of this impact, of your equipment, was the left rear wheel? A. Yes, sir.

Q. And the other three wheels were entirely on the westbound lane? A. Yes, sir.

Q. The Buick would be coming up a slight hill, would it not, just prior to this impact? [83]

A. Yes, sir.

Q. And, by the way, as you were towing this, or attempting to tow this semi, in order to get around

(Testimony of J. W. Orby Nation.)

you, a car would have had to have crossed over into what would be the eastbound lane, would it not?

A. Yes, sir.

Q. Across the white line? A. Yes, sir.

Q. So that actually you were facing more east than south in the westbound lane?

A. Yes, sir.

Mr. McCormick: I think that is all.

Mr. Henderson: No questions.

The Court: You are excused.

(Witness excused.)

Mr. McCormick: Your Honor, I observe Officer Cochran is still here. As far as I am concerned, he may be excused, unless the other side wants him to remain.

Mr. Henderson: If the Court please, I would like to have him retained as a witness.

The Court: All right.

Mr. McCormick: Mr. Evans, will you take the stand, please? [84]

### LONDON EVANS

called as a witness in behalf of the plaintiff, having been first duly sworn, testified as follows:

#### Direct Examination

By Mr. Berkley:

Q. Will you state your name, please?

A. London Evans.

Q. And you are the administrator of the estate,

(Testimony of London Evans.)

are you?           A. I am.

Q. And you are the plaintiff bringing this action?  
A. I am.

Q. Where do you live, Mr. Evans?

A. I live at 54th in North Oakland. I haven't been moved long.

Q. Who do you live there with?

A. I own the place.

Q. That is, in Oakland?           A. Oakland.

Q. With your wife?           A. Yes.

Q. Do you have any children?

A. I have seven of them.

Q. Are you the guardian of the seven children that were left as the result of the death of the [85] mother and father?  
A. Yes, sir.

Q. Where are they living?

A. 1614 Ward Street, Berkeley.

Q. Can you give us the names of those seven children?

A. The oldest one is General Greer, Junior. And the other one is Charles.

Mr. Henderson: I don't know that this is material, under our measure of damages. I have no objections to it.

The Court: I don't know as it really is necessary. I read the depositions of this man while you were marking the photographs. I don't know whether I should have or not.

Go ahead. [86]

Mr. McCormick: We may be in error, your Honor, but our position was this, that insofar as

(Testimony of London Evans.)

the measure of damages for the loss of the father and mother are concerned, that the number of children, we realize, is not pertinent——

The Court: No.

Mr. McCormick: ——except we thought perhaps the manner in which the wife occupied her time and contributed to the community earnings would be pertinent to this.

The Court: The Court always finds out those things. Go ahead.

Q. (By Mr. Berkley): You are now taking care of these children, aren't you, Mr. Evans?

A. I am.

Q. Did you tell me where they lived?

A. 1614 Ward Street, Berkeley.

Q. Do you have someone taking care of them?

A. I do have.

Q. Who is that lady?      A. Mrs. Underwood.

Q. Are you paying her for taking care of the children?      A. I am.

Q. How much do you pay her? [87]

A. She wanted \$200 a month, but she is serving for \$108 in cash, and the other is considered her board and room.

Q. Is she the only one living with the children?

A. She is the only one.

Q. And she stays there 24 hours a day?

A. Twenty-four hours a day.

Q. Does the Estate receive any money from the county to take care of the children?

A. Sixty dollars.

(Testimony of London Evans.)

Q. Is there any other source of income that comes into the family?

A. There is. The V.A., the Veterans Association pays them \$80, and the Social Security pays them \$70.

Q. Are there any other moneys that are coming in to help support them at this time?

A. Not any more than what I pay myself.

Q. Now, you have been handling their Estate now for approximately twelve or thirteen months, haven't you?      A. I have.

Q. And during that time you have had a chance to observe and keep track of the expenses it takes to take care of these seven children, isn't that [88] correct?      A. That is correct.

Q. Can you give me what it costs the Estate to take care of the seven children, for their food and clothing, a month?

A. Well, the actual cost, it has been running \$300 a month.

Q. That is for food?

A. Food and clothing.

Q. This house they are living in, do they own it?

A. No; they don't own it. They are buying it.

Q. Let me ask you this question, Mr. Evans: Did your son-in-law and your daughter, did they own a home at the time of their death?

A. No, they didn't.

Q. Were they buying one?



(Testimony of London Evans.)

A. Well, yes; they had a contract on the way to buy one.

Q. How much had they paid down on this contract?      A. Five hundred dollars.

Q. What happened to that money that was deposited after the death of the mother and father?

A. What happened to that money?

Q. Yes; what happened to that \$500?

A. Well, that \$500 is held to pay that [89] money back that they borrowed.

Q. Has it been necessary for you to make any other contribution other than what you have told the Court here, in order to take care of those children per month?

A. Why, yes. I would always have to put in from \$75 to \$100 more.

Q. Where does that money come from?

A. I have paid it from my own savings, and from my own work.

Q. What kind of work do you do, Mr. Evans?

A. I am a pipe layer.

Q. What does your family consist of? Who is living with you at your house?

The Court: What does that have to do with it?

Mr. Berkley: I thought, your Honor, there might be some question as to how he could afford to pay additional money.

The Court: There isn't any question. It doesn't have anything to do with this case.

Mr. Berkley: I will withdraw the question.

Q. (By Mr. Berkley): Can you tell me where

(Testimony of London Evans.)

the mother and father were living at the time they died?      A. They were living in Richmond.

Q. How old is your daughter? [90]

A. My daughter was thirty-two.

Q. How old was her husband?

A. I think he was thirty-three.

Q. Can you tell me how much Mr. Greer was making at the time of his death, if you know?

A. Well, he was making about \$300 a month.

Q. How do you arrive at that? What was his occupation?

A. His real occupation was a minister.

Q. Was he working at that full time at the time of his death?

A. Oh, yes; the full time at the time of his death.

Q. Where was his church?

A. Well, he really didn't have a church. He had a tent church. He carried on his services in a tent.

Q. Where was that located?

A. That was located on the Bay Shore.

Q. Do you know how many meetings a week he ran?      A. About four or five, mostly five.

Q. Did you ever attend any of them?

A. Oh, yes; about two or three times a week.

Q. How was he paid?

A. Well, he was paid from the money that [91] he collected from his congregation.

Q. Did you have any idea, or do you have any idea how much money he collected from his congregation?

(Testimony of London Evans.)

A. Well, the nights that I were there, twenty-five and thirty dollars each night, except the week-end nights, like Saturday night, or Sunday, he would get around forty-five or fifty dollars and better.

Q. And did he receive his money out of the money that he collected?

A. That is right; out of the money that he collected.

Q. Do you know how long he had been preaching?

A. Well, I really don't know how long, but I think he had been preaching ever since he was quite a kid.

Q. When he married your daughter, was he preaching at that time?

A. He was a preacher then.

Q. And did he preach continually from the time that he married her until the date of his death?

A. Yes, continually.

Q. Now, General Greer and Rubby lived together all during the time of their marriage, didn't they?

A. All during the time. [92]

Q. They never were separated?

A. No; never were separated.

Q. They lived part of that time in Detroit?

A. Yes, they lived part of that time in Detroit.

Q. And then they had come back to California to live?

A. That is right.

Q. What was the condition of your daughter's health? Was she a healthy girl?

A. Yes; she was healthy.

(Testimony of London Evans.)

Q. Had she been in any accidents before?

A. No; she had never been in an accident.

Q. What was General's health?

A. His health was good, too.

Q. Was he the sole support of the children?

A. He was.

Q. Did you ever make any contribution to him in order to help him take care of his children?

A. No; I never did.

Q. Do you know whether or not he received any help from anybody else?

A. Not that I know of.

Q. As far as you know, then, he was the sole support of the children and his wife?

A. That is right. [93]

Q. All during the time of their marriage?

A. All during the time of his marriage.

Q. Did Rubby help him in his church work at all? A. She did.

Q. What did she do?

A. Well, she was kind of a secretary, like, and sung in the choir, and sometimes with the music.

Q. Her main job was work taking care of the children?

A. Yes; taking care of the children.

Q. Did she have anybody helping her take care of the children?

A. Well, at that particular time to run the meetings, they would bring the kids over to my place, and then sometimes we would go to church with them.

(Testimony of London Evans.)

Q. But she didn't have any outside person to come in that she was paying to help take care of the children?

A. Why, she paid this lady for a few nights, but I don't know how many—Mrs. Underwood.

Q. Now, when she left on her trip going to Detroit, did she leave someone in charge of the [94] children? A. She did.

Q. And who was that?

A. That was Mrs. Underwood.

Q. Where were they living at that time?

A. In Richmond.

Q. Was that in the house they had made a down payment on? A. That is right.

Q. You remember, don't you, Mr. Evans, when your son-in-law and your daughter left on a trip going to Detroit? A. I do.

Q. Do you know the date that they left?

A. Yes. I said it was the 10th day of December, 1952.

Q. How do you know that that is the date they left?

A. Because I sent back to Little Rock and got a duplicate of the license.

Q. I said, how do you know that the date they left going to——

A. Oh, the date they left. That is the day Mrs. Underwood taken the children over.

Q. And Mrs. Underwood is the lady now that is taking care of the children?

A. The same lady now. [95]

(Testimony of London Evans.)

Mr. Berkley: That is all.

Mr. Webster: Your Honor, I would like at this time to read into the record the life expectancy based on the Mortality Tables, shown in Volume 6 of the Arizona Code Annotated.

I believe London Evans' testimony here is that the wife was 32 years of age, and her life expectancy under the Actuaries Combined Experience would be 33.01 years. American Experience Table, 33.93 years. And Carlisle, 33.03.

And I believe London Evans' testimony as to the age of General Greer was 33 years, and the life expectancy would be 32.30, 33.21, and 32.36 years for these same ratings.

Mr. Berkley: No further questions.

### Cross-Examination

By Mr. Henderson:

Q. Mr. Evans, this \$500 down payment on the home that you mentioned, as a matter of fact, that was refunded, was it not, after the death?

A. It was.

Q. Now, did General Grant Greer operate this church by himself, or were there other ministers working with him?

A. Well, there were other ministers would [96] pay him visits, the ministers that he was preaching at their churches before he started to establish his church.

Q. Did he return those visits to their church?

(Testimony of London Evans.)

A. Yes; he would return them.

Q. Then at the date of the death of his daughter and son-in-law, they did not own any real property whatsoever?

A. No; they didn't own any property.

Q. Did they have any bank accounts?

A. No bank accounts that I know of.

Q. Did they have any insurance policies?

A. Not that I know of.

Q. Did they have any property of any kind other than personal effects, such as clothes?

A. You mean in the household?

Q. Yes; any kind of property.

A. Well, they had some, like a frigidaire, a washing machine, and odd pieces like that.

Q. Did they own the automobile they were driving at the time of this accident?

A. No; it was owned by the church.

Q. Now, following the accident, did you go to Yuma, Arizona, on the 23rd or 24th of December, for the purpose of attending an Inquest?

A. I did. [97]

Q. And did you testify as a witness at that Inquest?      A. I did.

Mr. McCormick: I would be willing to stipulate with counsel, if the Court please, that the entire transcript of the Inquest go into evidence, if you are willing.

Mr. Henderson: Yes; I would be willing to so stipulate.

Mr. McCormick: Would you mark that, please,

(Testimony of London Evans.)

Mr. Clerk, as Plaintiff's Exhibit the next number?

The Clerk: Plaintiff's Exhibit 20 in evidence.

(Said transcript was received in evidence and marked as Plaintiff's Exhibit Number 20.)

Q. (By Mr. Henderson): I hand you Plaintiff's Exhibit 20 in evidence, and direct your attention to page 13.

Would you begin at line 12, and read through line 19, just to yourself, so you are familiar with it?

A. Yes.

Mr. McCormick: In the interest of time, counsel, if you would like, I would just as soon you would read it to him. I have no objections.

Mr. Henderson: Very well.

Q. (By Mr. Henderson): While you were testifying at [98] that Inquest, were you asked these questions, and did you make these answers—

A. I did.

Q. Let me ask you the questions, first, Mr. Evans. A. All right.

Q. (Reading): "Do you know where the two were coming from?"

Referring to the Greers.

"A. Yes; they were coming from Detroit, Michigan.

"Q. Do you know when they left Detroit?

"A. I could not definitely tell the date. I think they left the State of California to Detroit 16th or 17th of December.



(Testimony of London Evans.)

“Q. How did they go back? A. By car.

“Q. The same car? A. Yes.

“Q. That was about the 16th or 17th of December? A. Yes.

“Q. You do not know when they left [99] Detroit? A. No.”

Now, did you make those answers to those questions at the Inquest? A. I did.

Q. And you testified under oath at the Inquest?

A. Yes. I couldn't exactly remember those dates.

Q. You did make those answers to the questions, though, Mr. Evans? A. Yes, I did.

Q. Mr. Evans, I ask you if you recall, following the Inquest, discussing this matter with patrolman Louis Cochran, the questions of the dates of leaving?

A. The dates they was leaving was mentioned by Mr. Cochran, but I told him——

Q. Did you tell him——

Mr. McCormick: Finish your answer.

The Witness: But I told him I was not for sure what dates that they left.

Q. (By Mr. Henderson): And did you tell him that they made the trip from California to Detroit, and back to Yuma in approximately six days? [100]

A. No; I didn't say in approximately six days. I told him that I didn't know exactly when they left, but I didn't think it had been over a week.

Q. Since they left California?

A. A week from the time that they left California, yes.

(Testimony of London Evans.)

Mr. Henderson: No further questions.

Mr. Berkley: That is all.

(Witness excused.)

Mr. McCormick: At this time, if the Court please, as the Plaintiff's Exhibit next in order, we would like to offer in evidence the deposition of Rena Williams, which was taken in the City of Hope, Arkansas, February 5, 1954, by stipulation between counsel.

I take it it will not be necessary to read it into the record.

The Court: No.

The Clerk: Plaintiff's Exhibit 21 in evidence.

(Said deposition of Rena Williams was received in evidence and marked as Plaintiff's Exhibit Number 21.)

Mr. McCormick: The plaintiff will rest, your Honor.

(Plaintiff rests.)

Mr. Henderson: If it please the Court, at [101] this time I would like to move for judgment for the defendant, on the ground that the plaintiff's evidence has shown absolutely no negligence whatsoever on the part of Mr. Nation, or defendant Griffen Buick, Inc.

The evidence has shown that the wrecker was upon the north side of the highway, that it was occupying a part of that side of the highway, that the proper flares had been put out, that adequate

warning was given to all approaching automobiles, and that the actual vehicles themselves were properly lighted.

The evidence, if anything, has shown that whatever negligence there may have been would be very definitely upon the part of the operator of the Buick automobile in traveling at night at an excessive speed, and failure to observe the red warning flares that were put out well in advance of the scene of the accident.

The Court: The motion will be denied. [102]

(Thereupon, the defendants, to maintain the issues on their parts, introduced the following evidence, to wit.)

Mr. Henderson: I would like to call patrolman Cochran to the stand, please.

### LOUIS O. COCHRAN

called as a witness in behalf of the defendants, having been previously duly sworn, testified as follows:

#### Direct Examination

By Mr. Henderson:

Q. You are the same Louis Cochran who has testified before in this case?      A. Yes, sir.

Q. Officer Cochran, did you ascertain the license number of the Buick automobile involved in this accident?      A. Yes, I did.

Q. What was that license number?

A. It was a 1952 Michigan license, number CR-10-93.

(Testimony of Louis O. Cochran.)

Q. That would be CR-10-93 Michigan, then, for 1952? A. That is correct.

Q. Officer Cochran, did you have a [103] conversation with London Evans following the Inquest into the deaths of the two Greers at Yuma?

A. Yes; I did.

Q. And at that time did you discuss with London Evans the date of the Greers' departure from California? A. Yes; I did.

Q. Did he tell you what that date of departure was?

A. He stated that he wasn't sure of the date, but that he believed it was the 16th or 17th.

Q. Of December? A. Of December.

Q. Now, during your conversation with London Evans, was Arkansas mentioned? A. Yes.

Q. And did he indicate whether or not he had been in contact with Arkansas immediately prior to the accident?

A. I don't recall his exact words on that, but I know he did state that the Greers had returned from Detroit through Hope, Arkansas, and had stopped there with some relatives for one night.

Q. Did he indicate whether or not the Greers had contacted him from Hope, Arkansas?

A. Well, apparently so. I don't believe I [104] questioned him in that regard, but he knew that they had stopped in Hope, Arkansas.

Q. Did he indicate when in regard to the accident that he had received such a communication?

A. I believe that would have been the night of

(Testimony of Louis O. Cochran.)

the 21st. It was a couple of nights before the accident.

Q. Now, Officer Cochran, you stated earlier you had been an Arizona State Highway Patrolman for approximately four years?

A. Four and a half.

Q. You are familiar with the highways of the State, aren't you?

A. To a great extent, yes.

Q. Have you ever driven the road from Yuma to Benson, Arizona? A. Yes.

Q. And do you know how far it is from Yuma to Benson, Arizona?

A. Well, approximately, yes.

Q. Approximately how far is it?

A. I would say about 270 miles.

The Court: How far did you say?

The Witness: Two hundred seventy miles.

Mr. McCormick: Two seven 0?

The Witness: Yes. [105]

Q. (By Mr. Henderson): I show you a State of Arizona road map, and ask you if you would determine the distance from Benson to Yuma, Arizona? A. This chart says 292 miles.

Q. That is from Benson to Yuma?

A. Yes.

Q. How far east of Yuma, Arizona, did the accident occur? A. Seventeen miles.

Q. And that would be 292, and 17, that would be approximately 275 miles from Benson to the scene of the accident? A. Yes.

Mr. Henderson: No further questions.

(Testimony of Louis O. Cochran.)

Cross-Examination

By Mr. McCormick:

Q. Officer, when you had this conversation with London Evans on the day of the Inquest, he told you he wasn't sure of the date that they had left, that is correct, isn't it?

A. Yes; that is correct.

Q. And he didn't specifically state to you that he had received a telephone call from them from Hope, Arkansas, did he? [106]

A. I don't recall him saying anything about a phone call, but I know he did state that they had stopped overnight at Hope.

Q. That is right.

A. On one of the nights coming back from Detroit.

Q. All right. But he didn't say anything specifically about receiving a phone call either from his daughter or son-in-law?

A. I don't recall that.

Q. One question more.

Directing your attention to Plaintiff's Exhibit Number 13, Officer, would that picture portray the area in which you found the skid marks—excuse me, tire marks?

A. This appears to be a little further east than the actual point of impact.

Q. Maybe we can find another photo.

Directing your attention to Plaintiff's Exhibit

(Testimony of Louis O. Cochran.)

19, would that indicate the area in which you found the tire marks?

A. This would indicate more the actual spot where the semi and the Buick were at rest, yes.

Q. Well, then, neither one—on neither of these could you then actually portray the skid marks, I take it, because of the nature of the [107] pictures?

A. That is correct. They are not in the pictures.

Mr. McCormick: No further questions.

The Court: You are excused. You have nothing further?

Mr. Henderson: No, sir.

(Witness excused.)

Mr. Henderson: I would like to call Mr. W. T. Mendenhall.

### WILFRED T. MENDENHALL

called as a witness in behalf of the defendants, having been first duly sworn, testified as follows:

#### Direct Examination

By Mr. Henderson:

Q. Will you state your name, please?

A. Wilfred T. Mendenhall.

Q. Where do you live, Mr. Mendenhall?

A. Phoenix, Arizona.

Q. What is your present occupation?

A. State Entomologist of Arizona.

Q. How long have you occupied that position, Mr. Mendenhall?

(Testimony of Wilfred T. Mendenhall.)

A. About three months. [108]

Q. And what was your occupation prior to that time?

A. I was the assistant State Entomologist.

Q. What were your duties as assistant State Entomologist?

A. I was supervisor of the Arizona Agricultural Inspection Stations.

Q. And how long did you occupy that position?

A. Since November, 1945.

Q. Approximately six years? A. Yes.

Q. And in such a position, are you familiar with the various checking stations around the State of Arizona? A. The inspection stations, yes.

Q. Inspection stations. And have you ever been in one of the inspection stations as an inspector?

A. Yes.

Q. Are you familiar with the routine in these inspection stations? A. I am.

Q. What is the routine duty of an inspector in those inspection stations?

A. He inspects all vehicles, passenger cars and trucks that enter the State, for agricultural [109] products which might carry insects and diseases.

Q. Is a record kept of each inspection?

A. It is.

Q. There is a record kept of each vehicle passing through the station? A. Yes.

Q. Now, do you know whether or not in December of 1952 there was an inspection station located at Benson, Arizona? A. There was.



(Testimony of Wilfred T. Mendenhall.)

Q. And what automobiles did that inspection station have inspected?

A. All automobiles entering the State by highway 86 or highway 80, and all Arizona automobiles except those local residents of Benson area.

Q. In other words, you would cover the automobiles proceeding in a westerly direction or north-westerly direction into Arizona? A. Yes.

Q. Now, in the course of checking and inspecting these automobiles, is a record kept of each automobile? A. Yes; it is.

Q. What information is kept?

A. The State the license plate shows, the license plate number, the make of the automobile, [110] and any materials which are taken from that automobile, together with the insects, pests, or diseases that are found in the automobile, and the initials of the inspector making the inspection.

Q. Now, are you familiar with what happens to these records after they have been made up in the inspection station? A. Yes, sir.

Q. What does happen to them?

A. They are made in duplicate. They are kept at the inspection station for one week, and then the original copies are sent to the office of the State Entomologist where they are kept on file for at least five years.

Q. And at the present time, are you custodian of those records? A. Yes; I am.

Q. And were records from the Benson checking station for December 23rd, 1952, forwarded to the

(Testimony of Wilfred T. Mendenhall.)

State Entomologist?           A. They were.

Q. And do you have those particular records in accordance with the request of the subpoena that was served upon you?

A. I do. I have the one day record, date of December 23rd. [111]

Mr. Henderson: May that be marked for identification, please?

The Clerk: Defendants' Exhibit D for identification.

(Said document was marked Defendants' Exhibit D for identification.)

Q. (By Mr. Henderson): I hand you Defendants' Exhibit D for identification, and ask you what those records are?

A. Those are the records of the automobiles and house trailers inspected at the Benson inspection station on December the 23rd, 1952.

Q. How many pages does that report consist of?

A. The report consists of pages two to eighty-three.

Q. Does that cover the entire day from midnight to midnight?

A. With the exception of page one, which is apparently lost.

Q. Are those pages in order from a timekeeping point?

A. They are from midnight to midnight.

Q. Now, can you identify the time at which each page was begun?

(Testimony of Wilfred T. Mendenhall.)

A. Within reasonable allowance for error.

Q. I ask you to turn to page sixty-one. Do [112] those records indicate whether or not an automobile, Buick automobile, bearing the Michigan license plate CR-10-93, passed through the Benson checking station?

A. There was a Buick automobile, CR-10-93, with what I presume to be "Michigan." The writing is not very good. It is "Mic," but there is not much of an "h" there.

Q. Do you know whether any other states beginning with "M" that have a double letter prefix for 1952 are there?

A. No; offhand I do not, but I can check on that.

Q. Would you do so?

A. No; I think there was no other state beginning with "M" that had a double letter prefix.

Q. Are you able to determine from the records at which time that automobile passed through the Benson checking station?

A. According to the records, it would have passed through the inspection station at Benson shortly after 4:25 p.m.

Q. Now, why do you say shortly after 4:25 p.m.?

A. The sheet number 61 was started at 4:25, and this car bearing license CR-10-93 was the second automobile written on that sheet of [113] twenty automobiles.

Q. What time was sheet number 62 begun?

A. 4:30.

Mr. Henderson: No further questions.

(Testimony of Wilfred T. Mendenhall.)

Cross-Examination

By Mr. McCormick:

Q. Are you able to tell, Officer, the person who compiled this particular report?

A. There were apparently four men working at the time. There were four initials on the same sheet.

Q. Well, but are you able to tell who J. A. would be?           A. Yes; J. A., Mr. J. Axtel.

Q. Was he one of your inspectors at that time?

A. He was.

Q. Do you know where he presently is?

A. No; I do not know. He is not in our employ any more. I believe that he is living in the vicinity of Benson, but I am not sure where.

Q. Now, where does it indicate on this sheet the time that it was commenced?

A. Here. Time, 4:25.

Q. Oh, I see. Do you know what inspector would have indicated the time on this sheet? [114]

A. No; I have no way of telling.

Q. Now, you would read from the back on up?

A. Back on up, yes, sir.

Mr. McCormick: I have no further questions.

Mr. Henderson: May the witness be excused, your Honor?

The Court: He may be.

(Witness excused.)

Mr. McCormick: Is this exhibit in evidence?

Mr. Henderson: No; that has not been offered in evidence.

I will call Mr. Nation, please.

J. W. ORBY NATION

called as a witness on behalf of the defendants, having been previously duly sworn, testified as follows.

Direct Examination

By Mr. Henderson:

Q. You are the same J. W. Orby Nation who has testified previously in this case?

A. Yes, sir.

Q. Mr. Nation, as you drove out to the scene of the accident, were you able to see this GMC trailer, tractor and trailer, before you actually pulled up alongside of it? [115]

A. Yes, sir.

Q. And from approximately what distance could you see it?

A. Oh, between 150 and 200 yards.

Q. Now, what could you distinguish at that distance?

A. I could just see that there was a big—you could picture it as a tractor and trailer.

Q. Were there any lights on that equipment?

A. No, sir.

Q. After your arrival, were any lights turned on on your equipment?

A. Yes, sir.

Q. How long did they remain on, if you know?

A. From the time I got there until the accident.

Q. I believe you testified this morning that when

(Testimony of J. W. Orby Nation.)

you placed these two fusees out along the north edge of the highway both east and west of the truck, that at the same time, or about the same time you also put in place reflectors alongside of these fusees, but off toward the center of the north half of the highway?       A. Yes, sir.

Q. And those were approximately the same distance from the disabled equipment as the fusees?

A. Yes, sir. [116]

Q. Now, when you pulled around to the rear of the trailer, and hooked on there, could you describe for us what kind of an operation it is to hook on?

A. Well, you just take the line, and it has a hook on the end of the line, and you just hook it onto a spring or anything.

Q. It is a complicated tie process?

A. No; you just hook the hook.

Q. And at the time you were hooked onto the rear of the trailer, were your two boom lights in operation?       A. Yes, sir.

Q. And can you tell us whether or not they were focused on the back of the trailer?

A. They would be, yes, sir. They would be on the back of the trailer.

Q. Now, I believe you testified one was a red and one was a white light?       A. Yes, sir.

Q. Do you know how this white light would compare in strength with the headlight of an automobile?

A. It would be probably almost as strong as a headlight.

(Testimony of J. W. Orby Nation.)

Q. And did it at this time light up the back end of the trailer? [117]      A. Yes, sir.

Q. You have previously testified that in your opinion when the Buick was at approximately one-half mile distance that you formed an opinion as to the speed of that automobile at approximately 100 miles per hour.

From that point until the Buick reached the tow truck, did you continuously watch the Buick?

A. Yes, sir.

Q. And did anything occur in that interval to make you change your estimate of the speed of the Buick?      A. No, sir.

Q. Then your estimate would be that it continued at approximately 100 miles per hour?

A. Yes, sir.

Q. Now, have you had any experience driving a Buick automobile, or driving Buick automobiles at high speeds yourself?      A. Yes, sir.

Q. What is that experience?

A. When I was in the station, my job was balancing wheels, and after a wheel balance we used to take them out for a road test and see that the car doesn't shimmy at a high rate of speed. [118] That is the purpose of balancing the wheels.

Q. How fast do you drive these cars on a road test?      A. Around 100 miles an hour.

Q. And have you ever noticed a whine or noise similar to the whine you heard from the tires of this Buick while you were road testing?

(Testimony of J. W. Orby Nation.)

A. Yes, sir; whenever you drive them at a high rate of speed, they do whine.

Q. Is that one of the bases for your estimate of speed?      A. Yes, sir.

Q. Now, you testified that when the Buick was about a half mile away you flicked your lights on and off until the actual moment of impact.

You also testified that you did not move your equipment. Is there any reason why you did not move that equipment?

A. The reason I didn't move it was because I didn't have the time after I saw that there was trouble.

Q. Didn't you testify there was approximately fifteen seconds in there?

Mr. McCormick: He said twenty.

Q. (By Mr. Henderson): Fifteen to [119] twenty?

A. Within that length of time you couldn't get out and disengage the winch, and then get back in the truck and put it in gear and move it off of the road before the impact.

Q. Was it necessary to disengage that winch before you could move the wrecker?

A. Yes, sir; because the gears will lock up if you don't.

Q. Now, during the time interval between your first getting in place behind the trailer and your hooking onto the rear of it, and the time that this accident occurred, was there any other traffic passing on the highway?      A. Yes, sir.



(Testimony of J. W. Orby Nation.)

Q. And did that pass from both directions?

A. Yes, sir.

Q. Approximately how many cars, if you recall, passed you going in a westerly direction?

A. Three or four, anyway.

Q. And did you observe those cars as they approached you from the east?      A. Yes, sir.

Q. Did those cars have any change in speed as they approached the flare or the equipment on the highway?      A. Yes, sir. [120]

Q. Was your truck in the same position when those cars passed as it was when the accident occurred?      A. Yes, sir.

Q. And didn't those cars give way at all to go by you?      A. Yes, sir.

Q. Did they slacken their speed?

A. Yes, sir.

Q. Were there any of them that did not, other than the Græer Buick?      A. No.

Q. Now, immediately before the impact between the Buick and your pick-up, could you see the flare that had been placed along the north side of the highway?      A. Yes, sir.

Q. And could you see the reflector that was placed there approximately the middle of the north lane?      A. Yes, sir.

Q. Both of them were visible to you from your seat in the cab?      A. Yes, sir.

Q. Now, did anyone stop at the scene of the accident immediately afterward? [121]

A. Yes, sir.

(Testimony of J. W. Orby Nation.)

Q. And how many cars stopped within the next few minutes?

A. There was two cars and a truck, that I remember.

Q. Traffic was fairly heavy that night, then?

A. Yes, sir.

Q. And did one of those cars go for the highway patrolman?      A. Yes, sir.

Q. And was there a colored sailor man driving one of those cars?      A. Yes, sir.

Q. And did he stop and make any comment regarding the Buick?

Mr. McCormick: I will object to this question, your Honor, on the grounds that it calls for a hearsay answer, unless it could be shown that the comment he made was made in the presence of the plaintiffs. Certainly, it would be purely hearsay.

Mr. Henderson: If the Court please, of course we can't show it was made in the presence of the plaintiffs.

I would like to make an offer of proof on it, as to what would be shown. I maintain it [122] comes under the *res gestae* rule.

Mr. McCormick: Well, I do not believe it does, your Honor, particularly when apparently the man isn't even identified by name, just a colored sailor.

The Court: I thought he was present.

Mr. McCormick: No, sir; he was not.

The Court: He wasn't present? I never heard of that.

Mr. Henderson: You lost me a little bit there.

(Testimony of J. W. Orby Nation.)

The Court: I thought the witness was present. I never heard of somebody coming up on an accident and making a comment that would be admissible. I made a comment when I saw those photographs today. It was inaudible.

Mr. Henderson: I would like to make proof at this time.

The Court: Go ahead.

Mr. Henderson: What is the Court's ruling?

The Court: Go ahead.

Q. (By Mr. Henderson): What did the driver of the automobile say?

A. He said that the Buick was the automobile that had passed him down the road, and he was driving approximately 70 miles an hour, and that the Buick passed him like he was standing [123] still.

Q. About how long after the actual impact did this conversation take place?

A. Just a matter of minutes, probably five minutes, or something.

Q. Now, did you ask him about it?

A. No.

Q. Did he make the comment voluntarily?

A. Yes, sir.

Mr. Henderson: No further questions.

(Testimony of J. W. Orby Nation.)

Cross-Examination

By Mr. McCormick:

Q. This colored sailor that came up and mentioned something, this was how long after the accident?

A. Probably about five minutes, or something.

Q. Had you ever seen him before?

A. No, sir.

Q. Ever seen him since?           A. No, sir.

Q. Did he say how far down the road he was passed?           A. No, sir.

Q. Did you bother to take his name?

A. No, sir.

Q. Now, when you observed this car half a [124] mile away, you were sitting inside your cab, were you not?           A. Yes, sir.

Q. And your motor was running?

A. Yes, sir.

Q. Your winch was running?           A. Yes, sir.

Q. Does that make a noise?

A. It makes a little noise, yes, sir.

Q. And it is your testimony that you could hear the sound from the tires of this Buick from that distance?           A. Yes, sir.

Q. You appreciate that half a mile is 2,640 feet?

A. I hadn't figured it out, but I guess it is right.

Q. 5,280 feet, one half of that.

And then you continued from when you observed that car at that distance, you having formed the

(Testimony of J. W. Orby Nation.)

opinion he was going about 100 miles an hour, and you continued to watch, didn't you?

A. Yes, sir.

Q. And continued to blink your lights?

A. Yes, sir.

Q. Now, is it your testimony that as long [125] as your winch is running you can't back your vehicle?

A. Yes, sir.

Q. Under any circumstances?

A. You can back it, but it might not go over but just a little ways before the gears would gum up on it, because the power take-off is from the transmission.

Q. Actually, you can back it up, and the only effect is that your cable slacks?

A. No; the gears lock up, and it just locks the back wheels.

Q. How do you disengage the winch?

A. You can stop it from winching by pushing your foot on the clutch, or at the rear. It has a lever on the clutch, and then another lever there to disengage the winch.

Q. Actually, you can disengage the winch by putting your foot on the clutch?

A. I can disengage it, but I can't stop it. I can disengage it.

Q. All right. That is the lever, right? (Indicating on photograph.)

A. Yes, sir. There are two of them.

Q. On the left rear, and all you have to do is give them a push with your hand, right?

(Testimony of J. W. Orby Nation.)

A. One of them, you pull up to release the [126] clutch, and then just work the other lever in or out again.

Q. All you have to do is go back and work those levers? A. That is right.

Q. And that would freeze the winch?

A. That is right.

Q. And your estimation of the time that elapsed from the time that you first noticed this danger until this accident occurred was approximately twenty seconds? A. Somewhere around there, yes.

Q. It could have been a little more; right?

A. Could have been; I am not sure.

Q. So that I understand you, having watched the Buick approach all the time when it was, say, oh, 2,300 feet away, you still saw it, or you saw it still going a hundred miles an hour, right?

A. Right.

Q. And the same when it was 2,000 feet away?

A. Yes, sir.

Q. And 1,700 feet away?

A. I didn't see any change at all.

Q. So from the entire time you saw it, you observed it constantly, and until the time it approached you, you observed it was not [127] changing its speed in any way, correct?

A. That is right, sir.

The Court: We will have a brief recess at this time.

(Recess.)

(Testimony of J. W. Orby Nation.)

The Court: You may proceed.

Mr. McCormick: I have no further questions of this witness, your Honor.

Mr. Henderson: I have one or two, your Honor.

Redirect Examination

By Mr. Henderson:

Q. Mr. Nation, as you watched the Buick approach you, did you leave your winch motor engaged?

A. I stopped the winch, but the motor of the truck that operates the winch, it was still idling.

Q. And when you stopped that motor, then did the noise die down from that motor?

A. From the winch, yes, sir.

Q. And was it before or after that time that you heard the noise of these tires?

A. I heard them before and after.

Q. Now, you indicated that on your first arrival at the scene of the accident, you put out flares along the highway.

Subsequent to that time, did you put out [128] additional flares?

A. You mean after the accident?

Q. At any time.           A. Yes, sir.

Q. And did anyone else put out additional flares?

A. You mean after the accident?

Q. At any time.           A. Yes, sir.

Q. And did anyone else put out additional flares?

A. Yes, sir.

(Testimony of J. W. Orby Nation.)

Q. When did they put out these additional flares?

A. We put some out right after the accident. We put more out, and then we put—from then on until the highway patrolman got there, we kept them out, and then the highway patrol took over after he was there.

Q. Were these additional flares located at the approximate position where the two flares you first put out were?

A. Yes.

Mr. Henderson: No further questions.

Mr. McCormick: I have no questions.

(Witness is excused.) [129]

Mr. McCormick: I would like at this time, your Honor, to offer in evidence the original deposition of the defendant, J. W. Orby Nation.

Mr. Henderson: We have no objection.

The Court: Very well.

The Clerk: The depositions will be Plaintiff's Exhibit Number 22 in evidence.

(Said deposition was received in evidence and marked Plaintiff's Exhibit 22.)

Mr. McCormick: I wonder, counsel, if you would stipulate at this time that the approximate mileage from Hope, Arkansas, to the scene of the accident is 1,390 miles?

Mr. Henderson: On the basis of give or take twenty miles?

Mr. McCormick: Yes.



Mr. Henderson: That would make it about 1,410.

Mr. McCormick: All right, let us split it and make it 1,410.

Mr. Henderson: Mr. McCormick, I wonder if you would be willing to stipulate at this time that the period of five and three-quarters hours for traveling 274 miles would make an approximate speed of 47.65 miles per hour?

Mr. McCormick: We figured it 46, but 46 or 47, that is close enough. [130]

Mr. Henderson: Defendant rests, your Honor.

(Defendant rests.)

Mr. McCormick: I am willing to submit the case, but I would like to have about two minutes to sum up our position, if your Honor please.

The Court: All right.

(Thereupon counsel for plaintiffs and counsel for defendants presented argument to the court.)

The Court: Is that all?

Mr. McCormick: Yes, sir.

Mr. Henderson: Yes, sir.

The Court: All right. You may prepare your memorandum. I suppose you want time to reply to it?

Mr. Henderson: We should appreciate it.

Mr. McCormick: I would like to have the testimony of the witness Nation **written up**.

The Court: Ten days after receipt of the transcript, and you may have five or ten days.

Let the record show the case is submitted.

(Which was all of the evidence offered or received on the hearing of the above-entitled matter.) [131]

### Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the District of Arizona.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Phoenix, Arizona, this 29th day of December, A.D. 1954.

/s/ JANE HORSWELL,  
Official Reporter.

[Endorsed]: Filed January 6, 1955.

---

[Title of District Court and Cause.]

### CLERK'S CERTIFICATE TO RECORD ON APPEAL

United States of America,  
District of Arizona—ss.

I, William H. Loveless, Clerk of the United States District Court for the District of Arizona,

do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case No. Civ-1921 Phoenix, London Evans, Administrator of the Estate of General Grant Greer, Jr., deceased, Plaintiff, vs. Griffen Buick, Inc., an Arizona Corporation, and J. W. Nation, Defendants, and case No. Civ-1922 Phoenix, London Evans, Administrator of the Estate of Rubby Greer, deceased, Plaintiff, vs. Griffen Buick, Inc., an Arizona Corporation, and J. W. Nation, Defendants, on the docket of said Court.

I further certify that the attached and foregoing original documents bearing the endorsements of filing thereon are the original documents filed in said cases, and that the attached and foregoing copies of the minute entries are true and correct copies of the originals thereof remaining in my office in the city of Phoenix, State and District aforesaid.

I further certify that the said original documents, and said copies of the minute entries, constitute the record on appeal in said cases as designated in the Appellants' Designation filed therein and made a part of the record attached hereto and the same are as follows, to wit:

1. Complaint (Civ-1921 Phx.).
2. Complaint (Civ-1922 Phx.).
3. Defendants' Motion to Strike (Civ-1921 Phx.).

4. Defendants' Motion to Strike (Civ-1922 Phx.).

5. Order of September 21, 1953, granting Defendants' Motion to Strike (Civ-1921 Phx. and Civ-1922 Phx.).

6. Answer (Civ-1921 Phx.).

7. Answer (Civ-1922 Phx.).

8. Order of February 10, 1954, on Stipulation, Waiving Jury Trial (Civ-1921 Phx. and Civ-1922 Phx.).

9. Reporter's Transcript of Proceedings (Civ-1921 Phx. and Civ-1922 Phx.).

10. Order on trial Denying Defendants' Motion for Judgment (pages 101-102 Reporter's Transcript of Proceedings).

11. Plaintiff's Exhibits 1 through 21, inclusive.

12. Defendants' Exhibits A, B and C.

13. Order for Judgment, dated August 24, 1954, and filed August 27, 1954 (Civ-1921 Phx. and Civ-1922 Phx.).

14. Findings of Fact and Conclusions of Law (Civ-1921 Phx.).

15. Findings of Fact and Conclusions of Law (Civ-1922 Phx.).

16. Judgment for Plaintiff (designated as Order of October 18, 1954, for Judgment for Plaintiff), (Civ-1921 Phx.).

17. Judgment for Plaintiff (designated as Order of October 18, 1954, for Judgment for Plaintiff), (Civ-1922 Phx.).

18. Defendants' Objections and Exceptions to

Findings of Fact and Conclusions of Law and Judgment (Civ-1921 Phx.).

19. Defendants' Objections and Exceptions to Findings of Fact and Conclusions of Law and Judgment (Civ-1922 Phx.).

20. Motion for New Trial (Civ-1921 Phx. and Civ-1922 Phx.).

21. Order of February 21, 1955, that Defendants' Motion for New Trial be considered as a Motion to Set Aside Findings of Fact, Conclusions of Law and Judgments, and to enter Judgments for Defendants, or, in the Alternative, for a New Trial; and Order Denying said motion (Civ-1921 Phx. and Civ-1922 Phx.).

22. Notice of Appeal (Civ-1921 Phx.).

23. Notice of Appeal (Civ-1922 Phx.).

24. Supersedeas Bond on Appeal (Civ-1921 Phx.).

25. Supersedeas Bond on Appeal (Civ-1922 Phx.).

26. Statement of Points Upon Which Appellants Intend to Rely on Appeal (Civ-1921 Phx. and Civ-1922 Phx.).

27. Stipulation for Consolidation of Record on Appeal (Civ-1921 Phx. and Civ-1922 Phx.).

28. Designation of Contents of Record on Appeal (Civ-1921 Phx. and Civ-1922 Phx.).

29. Order Extending Time to File Record on Appeal and Docket Appeals (Civ-1921 Phx. and Civ-1922 Phx.).

I further certify that the Clerk's fee for preparing and certifying this record on appeal amounts to

the sum of \$3.20 and that said sum has been paid to me by counsel for the appellants.

Witness my hand and the seal of said Court this 27th day of April, 1955.

[Seal]      /s/ WM. H. LOVELESS,  
Clerk.

---

[Endorsed]: No. 14749. United States Court of Appeals for the Ninth Circuit. Griffen Buick, Inc., a Corporation, and J. W. Nation, Appellants, vs. London Evans, Administrator of the Estate of General Grant Greer, Jr., Deceased, Appellee. Griffen Buick, Inc., a Corporation, and J. W. Nation, Appellants, vs. London Evans, Administrator of the Estate of Rubby Greer, Deceased, Appellee. Transcript of Record. Appeals from the United States District Court for the District of Arizona.

Filed April 29, 1955.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

United States Court of Appeals  
for the Ninth Circuit

No. 14749

LONDON EVANS, Administrator of the Estate of  
GENERAL GRANT GREER, JR., Deceased,  
Plaintiff,

vs.

GRIFFEN BUICK, INC., an Arizona Corpora-  
tion, and J. W. NATION,  
Defendants.

STATEMENT OF POINTS

Come now Griffen Buick, Inc., and J. W. Nation, Defendants and Appellants herein, and state that they and each of them rely upon appeal upon the points set forth in their "Statement of Points Upon Which Appellants Intend to Rely Upon Appeal," filed in the United States District Court for the District of Arizona, in consolidated cases Civil 1921, Phoenix, and Civil 1922, Phoenix.

Dated at Phoenix, Arizona, this 30th day of April, 1955.

GUST, ROSENFELD, DIVEL-  
BESS & ROBINETTE,

By /s/ JAMES F. HENDERSON,  
Attorneys for Defendants and  
Appellants.

Service of copy acknowledged.

[Endorsed]: Filed May 3, 1955.

